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 1/20

HUGH GORDON - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr T Hopkins FRICS and Mrs N Wright

DECISION

The unanimous decision of the Tribunal is that 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 Tribunal, having endeavoured to seek clarification, was unclear as to whether the appellant intended to attend an oral hearing arranged in the matter. In the event, the hearing was listed on 22 February 2022 at 11.00 am at the Tribunals' Hearing Centre, Belfast, due Notice of Hearing having been given to the parties. However, after having afforded adequate notice and time to the appellant to be in attendance and indeed after having endeavoured to contact the appellant by telephone, without success, the Tribunal proceeded with a hearing. A "hybrid" oral hearing of this appeal took place on 22 February 2022, with the Chair

attending the hearing remotely by WebEx and with the two other Tribunal panel members being present in person at the Tribunals' Hearing Centre. There was no appearance by the appellant; the respondent's representative, Mr Gerard Fitzpatrick MRICS, attended by WebEx.

2. The appellant, by Notice of Appeal (in Form 3) dated 28 March 2020, appealed in respect of a listed hereditament situated at 45 Clay Road, Keady BT60 3QX ("the property"). The appeal was made out of time and an Order dated 20 June 2020 was made by the President extending time, without respondent objection. It was clear, from a reading of the content of the appeal form, that the appellant's appeal was made concerning the issue of whether or not the property ought to be included in the Valuation List or ought to be exempted. It was described by the appellant in the appeal as being a "calf house".

The Law

3. The relevant 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, as is normally the case, does not intend in this decision fully to set out all of the relevant statutory provisions including those of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, for the reason that these provisions have been fully set out in many decisions of the Valuation Tribunal which are readily available. All relevant statutory provisions and principles were fully considered by the Tribunal in arriving at its decision in this matter. In regard to the statutory definitions of "agricultural buildings" and "dwelling-house", firstly, the 1977 Order, Schedule 1, Paragraph 2, provides, insofar as material, for the definition of "agricultural buildings" as:-

> "*2.-(1) (a) … buildings occupied together with agricultural land and used solely in connection with agricultural operations thereon….; and*
> *(b) includes a building which is used solely in connection with agricultural operations carried on on agricultural land and which is occupied either—*
> *(i) by the occupiers of all that land; or (ii) by individuals who are appointed*

by the said occupiers for the time being to manage the use of the building… .
(c) …..
but does not include a building which is a dwelling-house.
(2) In this paragraph "building" includes a distinct part of a building."

Schedule 1, Paragraph 4, provides:-

"*4. In determining for the purposes of this Schedule whether anything used in any way is solely so used or whether any use of it is its sole use, no account shall be taken of any time in which it is used in any other way if that time does not amount to a substantial part of the time during which it is used*."

Schedule 5, Paragraphs 1 and 3, of the 1977 Order provide, insofar as material, for the definition of "dwelling-house" and other related matters as:-

"*1. In this Order—"dwelling-house" means, subject to paragraphs 2 to 5, a hereditament used wholly for the purposes of a private dwelling;…*
2. …..
3. A hereditament shall not be deemed to be used otherwise than wholly for the purposes of a private dwelling by reason of either or both of the following circumstances— (a) that it includes a garage, outhouse, garden, park, pleasure ground, yard, court, forecourt or other appurtenance which is not used, or not used wholly, for the purposes of a private dwelling; (b)that part of the hereditament, not being a garage, outhouse, garden, park, pleasure ground, yard, court, forecourt or other appurtenance, is used partly for the purposes of a private dwelling and partly for other purposes, unless that part was constructed, or has been adapted, for those other purposes."

The Evidence and Facts

4. The Tribunal noted the documentation adduced in evidence, including evidence relating to the comparables (these being potentially comparable properties from which evidence of Capital Value may be drawn for statutory purposes) put forward in the matter. In view of the appellant's non-appearance at hearing the Tribunal did not hear any oral evidence and submissions from the appellant. The Tribunal heard evidence and submissions from Mr Gerard Fitzpatrick MRICS, for the respondent. The Tribunal had before it the appellant's Notice of Appeal to the Tribunal (Form 3) and the following:-

4.1 The Tribunal's Order extending time dated 20 June 2020.

4.2 The Valuation Certificate dated 19 March 2020.

4.3 A document dated 17 June 2021 entitled "Presentation of Evidence" prepared on behalf of the Commissioner, as respondent, by Mr Gerard Fitzpatrick MRICS and submitted to the Tribunal.

4.4 A handwritten letter dated 26 November 2021 from the appellant to the Tribunal Secretary providing written evidence and advancing the appellant's submissions.

4.5 Copy correspondence with the parties and notes made by the Tribunal Secretary.

5. The property is located at 45 Clay Road, Keady BT60 3QX. The Tribunal carefully explored at hearing all of the available evidence concerning location and circumstances pertaining to the property. There was some photographic evidence, as an annexure to the Presentation of Evidence, and Mr Fitzpatrick was questioned by the Tribunal regarding that.

6. The evidence on behalf of the respondent was that on the occasion when Mr Fitzpatrick visited the property he was prevented from gaining access to the interior of the property in order to carry out an inspection on account of the fact that the main entrance door was blocked. From one photograph which was taken at the time by Mr Fitzpatrick, it is apparent that two wooden pallets are blocking the entrance door, projecting externally in a "V" shape. From the photographic evidence, as clarified by Mr Fitzpatrick, there is a bale of straw and a small calf located just at the entrance doorway (within this "V" shape). There is no evidence (apart from the appellant's assertions) of any agricultural use, apart from what is evident from that photograph, especially so as regards the interior of the property. Mr Fitzpatrick's evidence was that on another occasion another valuer (regrettably unnamed) was sent on behalf of the District Valuer to conduct an inspection, but that this person was unable to

gain access. It was recounted to the Tribunal by Mr Fitzpatrick that the appellant stated to the attending valuer, on that particular occasion, that a key had broken in the door, this reason being given by the appellant for not being able to afford interior access. In respect of that latter evidence from Mr Fitzpatrick, whilst Mr Fitzpatrick was not personally in attendance nor did he witness what transpired, the Tribunal under the current statutory regime is permitted to admit any relevant evidence (notwithstanding that it might be hearsay). It is a matter for the Tribunal to attribute appropriate weight to any evidence available, in proper and fairly-exercised discretion. It has to be said that it is a matter of regret that the appellant has chosen not to appear at Tribunal in order to afford his own account of matters. The Tribunal has no other available evidence to set against the foregoing evidence from Mr Fitzpatrick. Bearing everything in mind, the Tribunal accepts that there is sufficient evidence to conclude that the appellant, on two separate occasions by his conduct, obstructed access to the interior of the property, seemingly in order to frustrate an inspection by officials.

7. On account of the foregoing, the Tribunal is left with no persuasive or compelling evidence supporting the appellant's assertion that the property is used for agricultural purposes. The appellant does maintain in this appeal that the property is used, as he describes it, as a "calf house". The assertion is unsupported by any compelling and conclusive corroborative evidence. Thus the Tribunal has been deprived of an opportunity, on account of the appellant's non-attendance, of testing this assertion and of seeking further clarification from the appellant concerning the detail of what he claims to be the case. Because of this, the Tribunal's inevitable conclusion is that there is no substantial weight, without more, that the photographic evidence of the two pallets placed where they are externally to the door, together with the bale of straw located in the doorway and also the calf, at the time of the photograph being taken by Mr Fitzpatrick, conclusively establish that the property is (or at least was on that occasion) being used for agricultural purposes to the extent necessary to fulfil the statutory definition enabling exemption. Any evidence is of course a matter for either party to the case. However, the Tribunal is obliged to proceed by paying proper attention to any available evidence and by attaching appropriate weight.

8. From other photographic evidence within the Presentation of Evidence, this next matter consisting of a photograph taken of the rear of the property by Mr Fitzpatrick, it is evident that there is attached to the structure an external boiler house. This seems to be of quite recent construction. This boiler house has a bright metal exhaust flue which, likewise, appears to be of recent construction. In terms of credibility and cogency of the appellant's evidence, in a letter to the Tribunal dated 26 November 2021 the appellant's assertion is stated as follows: "… *this property was condemned 40 + years ago by Health and Social services as unfit to be lived in*". It seems improbable that, if the property had been condemned over 40 years ago by a relevant authority as being unfit for occupation, steps would have been taken to construct, in recent times, a relatively new boiler house with a bright metal flue. This assertion therefore poses a credibility issue concerning the appellant's evidence in that specific regard, and also generally. The Tribunal also notes from the photographic evidence that there appear to be curtains present and drawn closed in all of the windows. Again, Mr Fitzpatrick's evidence was that he was unable to conduct any inspection of the interior by looking through the windows, or indeed by any other means. There is therefore no evidence whatsoever concerning the interior which might otherwise be supportive of the appellant's assertion of agricultural use.

9. From the description contained in the respondent's Presentation of Evidence, the property is described as being a pre-1919 detached cottage constructed circa 1900, with a Gross External Area (GEA) of 110.4 m². It is situated in a rural location approximately 0.6 miles from the village of Keady, County Armagh. The property is located approximately 500 m from the roadside via a shared laneway, which is of average quality. The property is of rubble masonry construction with a slated roof and single glazed timber framed windows. External repair was noted to be poor and photographic evidence of condition is included in the Presentation of Evidence. Further inspection of the property externally confirmed that the windows and fascia-soffits were in poor repair and in need of replacement. There were noted some slipped tiles (slates) on the roof which required repair but, despite these issues, the property was, so it was reported, largely intact. The poor level of external

repair, it was stated, had been reflected in the current Capital Value figure of £45,000.

10. The rating history concerning the property is as follows:-

14 June 2017 the appellant submitted an application to the District Valuer requesting that the subject properly be removed from the Valuation List due to poor repair. On 17 September 2017 a Valuation Certificate was issued confirming that the property should remain in the Valuation List with no change to the existing Capital Value of £45,000.

7 October 2019 the appellant submitted a further application to the District Valuer stating that the property was in use as an agricultural building. (As far as the Tribunal is aware this was the first occasion upon which the appellant endeavoured to argue agricultural use exemption). On 12 February 2020 a Valuation Certificate was issued by the District Valuer confirming no indication of agricultural use and recommending no change to the existing Capital Value of £45,000.

9 March 2020 the appellant submitted an appeal to the Commissioner of Valuation and a decision of no change to the existing Capital Value of £45,000 was issued on 19 March 2020.

16 June 2020 the appellant appealed the decision of the Commissioner of Valuation to the Tribunal.

THE SUBMISSIONS

11. The submissions from the appellant in this appeal are based, as far as can be seen, upon the twin issues of: (i) whether or not the property ought to be subject to agricultural use exemption from rates and (ii) whether the property ought to be exempt on account of poor condition. The appellant has not endeavour to challenge the Capital Value ascribed, nor any of the comparables evidence employed in determining the Capital Value. Accordingly, as this is not under challenge in this appeal, the Tribunal does not need to address in any great detail the evidence of comparable valuations, but rather the Tribunal needs to focus upon the fundamental issue

of whether the property ought to be included in the Valuation List, or whether it ought to be exempt. Accordingly, as mentioned, the challenge concerning the exemption issue from the appellant seems to fall into two separate areas. The first of these is the agricultural exemption issue, as mentioned above. The second issue raised by the appellant relates to the state and condition of the property, which the appellant alleges is in poor repair. For the respondent (aside of the agricultural exemption issue), the arguments advanced are ones that have been well-rehearsed on a number of occasions before the Valuation Tribunal, in earlier cases. These arguments centre around the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin)*** this being a judgment of the High Court in England and indeed a case which has been the subject of some previous observations in a number of decisions of the Valuation Tribunal***.***

12. On behalf of the respondent, it is submitted that the case of ***Wilson v Coll*** is relevant in that it proposes the appropriate test to be applied. That test is a physical rather than an economic test. The proposition advanced is that the critical distinction is not between repairs which would be economic to undertake (or uneconomic) but rather the proper distinction is between a truly derelict property which is incapable of being repaired to make it suitable for its intended purposes and repairs which would render it capable again of being occupied for the purpose for which it was intended. The Tribunal notes in this regard the previously-determined cases of ***Whitehead Properties Ltd v Commissioner of Valuation [NIVT 12/12]*** and, more recently, ***Trodden v Commissioner of Valuation [NIVT 38/50]*** both of which make reference to ***Wilson v Coll***. The Presentation of Evidence also expressly refers to another case, ***Eric McCombe v Commissioner of Valuation***. It is accordingly submitted, for the respondent, that the property could not be described as “truly derelict”. Whilst it is conceded that the property is in poor repair externally and has been unoccupied for some time, it it is argued that it could be made fit for habitation with a reasonable amount of repair works, that the property appears to be largely weathertight and that the fabric of the building is intact. The current Capital Value ascribed, £45,000, accurately reflects the state and circumstances of the property. In respect of the agricultural use issue, reference is made to the Tribunal’s earlier decision in the case of

Rutledge v Commissioner of Valuation [NIVT 46/15] in which case it was determined that tyre storage fell far short of what would have persuaded the Tribunal that the property, in that case, consisted of an agricultural building.

13. In terms of the comparables evidence adduced in the Presentation of Evidence it is unnecessary to provide much detail save to mention the following:-

22 Mullyard Road, Keady, located 2.5 miles from the property and being a pre-1919 detached cottage with a Gross External Area (GEA) of 90 m² and a Capital Value of £50,000;

156 Clay Road, Keady, located 2.6 miles from the property and being a pre-1919 detached cottage with a GEA of 90 m² and a Capital Value of £65,000;

44 Rowan Road, Keady, located 5.3 miles from the property and being a pre-1919 detached cottage with a GEA of 66 m² and located approximately 400 m from the roadside within a farmyard and with a poor level of external repair which has been reflected in the Capital Value of £37,500;

THE TRIBUNAL'S DECISION

14. The Tribunal has carefully noted the evidence and the respective submissions made by both parties. Dealing first of all with the agricultural exemption issue, the Tribunal has carefully examined any evidence to support exemption. The Tribunal's conclusion from all of this evidence is that there is nothing which would lead the Tribunal to conclude that the property, in recent times, has been used for agricultural purposes in accordance with the 1977 Order, Schedule 1, Paragraph 2, and within the terms of the definition of "agricultural buildings", therein stated. Accordingly, the property is not exempt from rating on this ground.

15. Turning then to any other basis upon which the property might be exempt from inclusion in the Valuation List as a hereditament, the Tribunal (as is now

customarily the case) has been referred to ***Wilson v Coll.*** As previously observed in cases heard prior to this (for example in ***Whitehead Properties Ltd***) ***Wilson v Coll*** is not binding, but the case has been taken into account by the Valuation Tribunal in reaching a number of determinations in cases of this type. There is no "economic test" comprised in the relevant statutory provisions in Northern Ireland and the only proper approach is to examine the fact-specific circumstances in individual cases, taking proper account of any relevant factors. The focus should be upon whether a property is capable of being rendered suitable for occupation by the undertaking of a reasonable amount of repair works, so the proper distinction is between a truly derelict property, incapable of being repaired to make it suitable for its intended purpose, on the one hand and, on the other, repairs which would render it capable again of being occupied for the intended purpose. In this case, the Tribunal has regrettably been deprived, by the approach taken by the appellant, of any opportunity to assess potential evidence which would otherwise have been useful, if it had been more comprehensive. The respondent fully accepts that the property is in poor external repair but also argues that it is not truly derelict and asserts that it is reasonably capable of repair.

16. These cases always pose a difficulty the Tribunal. This is so for the reason that the Tribunal is inevitably tasked in the current regime with making an assessment as to where the property sits upon the notional spectrum. This is a spectrum between a property which is truly derelict, at one end, and at the other end of the spectrum, a property which requires only minor repairing works. Based upon any evidence available, the Tribunal has difficult in concluding that the property is truly derelict. The Tribunal would have very much preferred better, more comprehensive, evidence to enable its task to be more easily conducted. However, it must nonetheless make a decision based on available evidence.

17. As mentioned, each case must be adjudged specific to its own facts. On the facts of the present case, the Tribunal observes what is a single story cottage, albeit with a relatively recently-constructed external boiler, which might well

have been unoccupied for domestic use for a period of time, but hardly for the "40+" period asserted by the appellant. The appellant's unwillingness to assist in a full inspection has not advanced his case. Having conducted a full assessment of all of the evidence, the Tribunal's unanimous determination is that the property ought to be included in the domestic capital Valuation List.

18. Further, although this was not challenged by the appellant, the Tribunal has reviewed the comparables evidence and does not detect any deficiencies or manifest errors in the assessment of Capital Value. As the Tribunal has often observed, there is a statutory presumption contained within the 1977 Order, Article 54(3). Because of this, any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown. In order to succeed in an appeal to the Tribunal, any 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 the Tribunal to be so incorrect that the statutory presumption must be displaced and the Tribunal must adjust the Capital Value to an appropriate figure. The Tribunal, in assessing this appeal, saw nothing in the general approach taken to suggest that this has been approached for assessment in anything other than the prescribed manner, as provided for in Schedule 12 of the 1977 Order. This being so, as the appellant has not put forward any express challenge to the respondent's schedule of comparables nor any evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation, the presumption of correctness is not displaced.

19. For these reasons the Tribunal's unanimous decision is that the appellant's appeal cannot succeed and accordingly, the appeal is dismissed.

James Leonard

James Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 08 March 2022