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: 19/16

JOHN McGIVERN - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr T Hopkins FRICS and Dr P Wardlow

DECISION

The unanimous decision of the tribunal is that the subject property ought not properly to be included on the domestic capital Valuation List. The appellant's appeal succeeds and the tribunal Orders that the subject property shall be removed from the Valuation List.

REASONS

Introduction

1. This is (subject to the observations made below) a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant requested an oral hearing. The matter was listed for hearing at Belfast on 5 July 2017. The appellant attended the oral hearing accompanied by his son, Andrew McGivern, who assisted the appellant in the presentation of his case and also provided oral evidence. At hearing, the respondent was represented by Gareth Neill MRICS, accompanied by Gail Bennett MRICS.

2. The appellant, by Notice of Appeal (in Form 9) received by the Office of the Tribunal on 29 November 2016, appealed in respect of a listed hereditament situated at 22 Mays Corner Road, Ballybrick, Katesbridge BT32 5RB ("the subject property"). Form 9 is the relevant appeal form designed to be used concerning an appeal from a decision of the Commissioner of Valuation on appeal under paragraph 4 of schedule 8B to the 1977 Order, against a completion notice in respect of a building. Upon receipt of the appeal by the Office of the Tribunal 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 subject property ought to be included in the rating list or to be exempted. Having considered the papers on 5 December 2016, the President directed that the appeal ought properly to be received by the tribunal and processed, with the ultimate decision to be taken by the tribunal panel hearing the matter concerning any jurisdictional issues arising. Having further considered the matter, the tribunal determined that it was proper to deal with the appeal by receiving any evidence and by examining any issues emerging pertinent to the appeal, as presented, notwithstanding the use of the incorrect form of appeal by the appellant. This is so for the reason that the tribunal determined that it would be disproportionate and not appropriate to deprive the appellant of a potential remedy merely on the basis of the form of appeal employed by the appellant, notwithstanding the content of the appeal, as completed by the appellant, being tolerably clear and taking into account the nature of the evidence and arguments sought to be advanced by him. There was no objection to this on the part of the respondent.

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 valuation may be drawn for statutory purposes) put forward in the matter. The tribunal heard oral evidence and submissions from the appellant, together with Andrew McGivern and, on behalf of the respondent, from Mr Neill. The tribunal had before it the appellant's Notice of Appeal to the tribunal (Form 9) and the following:-

4.1 The Valuation Certificate dated 1 November 2016.

4.2 A document dated 16 March 2017 entitled "Presentation of Evidence" prepared on behalf of the Commissioner, as respondent, by Edel Macklin MRICS and submitted to the tribunal. It had been made clear on behalf of the respondent in advance of the hearing that Ms Macklin was unable to attend the tribunal hearing and the tribunal agreed to admit the Presentation of Evidence report, which was introduced into evidence by the respondent's representative, without objection from the appellant.

4.3 A typed letter dated 27 April 2017 from the appellant to the Secretary to the Valuation Tribunal advancing the appellant's submissions and a further letter in handwriting, undated but received by the tribunal on 8 June 2017.

4.4 A written response from Mr Neill on behalf of the respondent to the said letter of 27 April 2017, dated 17 May 2017 (and written confirmation that the respondent did not wish to respond in

writing to the letter received by the tribunal from the appellant on 8 June 2017, mentioned above).

4.5 A copy of a decision dated 4 April 2014 of the Valuation Tribunal concerning the matter of ***John McGivern v Commissioner of Valuation for Northern Ireland [NIVT 15/13]***.

5. The subject property is located at 22 Mays Corner Road, Ballybrick, Katesbridge BT32 5RB. The tribunal carefully explored at hearing with the parties all of the available evidence concerning location and circumstances pertaining to the subject property. There was some photographic evidence, as an annexure to the Presentation of Evidence, which indicates a single story rurally-located cottage structure, appearing to be roofed with corrugated asbestos material. External to the subject property, at the time the photographs were taken, are plastic-wrapped bales of hay. In the interior there appear to be stored bales of hay or straw, some plastic bags appearing possibly to contain some type of agricultural material, a few strips of timber, an agricultural spade and possibly a little evidence of some domestic furniture, although this latter was not fully clear from the photographic evidence. The front door of the property, from the photographs, appears to sit ajar and thus the property appears unsecured. The photographs also do reveal PVC glazed windows. These latter appear to be intact. The appellant and Mr Andrew McGivern provided some further information to the tribunal regarding these windows, which is mentioned below.

6. From the description contained in the respondent's Presentation of Evidence, the subject property is described as being a pre-1919 detached one-storey cottage with a small garage. The construction is of rubble masonry with an asbestos roof and the subject property is located in a rural area of County Down, near Katesbridge. For the respondent it is contended that, externally, the fabric of the building remains intact, with only minor cracking noted on the chimney stack. Rising damp was noted on the internal rear wall which is attributed in the Presentation of Evidence as being probably due to the rear

ground level, externally, being higher than the internal floor level. It is contended that the damp did not appear to be substantial and that this was not unexpected for a property of this age and character, with no heating. A hole in part of the ceiling in the kitchen area was noted. That is borne out by the photographic evidence. It is contended on behalf of the respondent that, whilst this is a basic cottage and quite plain, it appears to be structurally sound and that with a reasonable amount of repair works it could be made habitable. The subject property is described as having a gross external area ("GEA") of 77 m² with a store/ garage of GEA 16 m². The capital value ascribed is stated to take account of a 20% allowance and is represented by a figure of £70,000. There was no evidence in the Presentation of Evidence that the subject property had any services, save for stated mains water and electricity. There was an admitted error (this error being confirmed by Mr Neill) whereby the subject property is described as having a septic tank, whereas it is not served either by a septic tank or by mains sewerage services. In this respect, the tribunal carefully examined the aerial photography available, with the parties. It is evident that the subject property exists located on a very small site, adjacent to a substantial agricultural building. The elevations and site characteristics were explored and pertinent information was provided by the appellant. The feasibility of construction of a septic tank and any necessary spreader drains or soakaways was discussed with the appellant, including the ownership of any adjacent lands over which wayleaves or other legal rights might require to be obtained. The tribunal shall return to this specific issue further below.

7. The appellant contends (in the form of appeal) that, "*the house is not fit for human habitation*". "*No.1 it has asbestos roof which is a health risk, No.2 the roof is leaking rain and the house is damp from water soaking in, No.3 the house has no kitchen no toilet no bathroom no heating, No.4* [it] *is situated in a farm yard and is used for agricultural use, example … meal silage wrap wire posts cattle troughs empty meal bags etc. (it is used as a barn)*". In oral evidence the appellant and his son confirmed that the cottage had originally been constructed as a two-room dwelling, with a clay floor, sometime between 1830 and 1850. It had been a family dwelling throughout a number of generations. It had last been occupied by the appellant's sister who was, as it

is sometimes referred to, “given her day” in the house, but it had not been occupied as a dwelling house for at least 25 years. The tribunal explored with the appellant and his son the circumstances whereby the PVC glazed windows came to be installed. It was explained to the tribunal that a son of the appellant had been successful in a legal action, resulting in financial compensation having been received by him. He had been concerned that a property in the ownership of the family throughout a number of generations would, “go to rack and ruin”. The son therefore decided to arrange for replacement of the old steel single glazed windows, which were broken and in a bad state of repair, with PVC windows. That was done approximately 11-12 years ago, but the house had not been habited as a consequence; indeed it had not been lived in since about 1990. This work in window replacement was done merely to stop the subject property deteriorating any further. It was depicted, perhaps, as being executed for nothing other than sentimental reasons, as a number of generations of the family had at one time resided in the former dwelling.

8. The rating history concerning the subject property is that on 14 October 2011 an application was made to the District Valuer for a revision of the Valuation List on the grounds that the subject property was not in a habitable condition. The District Valuer amended the subject property’s capital value from £87,500 to £70,000 (thereby applying a 20% allowance) to reflect the state of repair and the lack of services. No further appeal was made by the appellant at this time. On the 28 January 2013 there was a further application made to the District Valuer for a revision of the Valuation List on the grounds that the subject property, “was never properly valued”. The District Valuer declined to make any change to the capital value. On 13 May 2013 the District Valuer’s decision was appealed to the Commissioner of Valuation. The Commissioner declined to make any change to the capital value. On 27 June 2013 the appellant appealed the Commissioner’s decision to the Valuation Tribunal, which latter did not uphold the appeal, for the reasons given in the tribunal’s decision of 4 April 2014. In May of 2015 and June of 2016 further applications were made to the District Valuer for a revision of the Valuation List on grounds that the property was unfit for human habitation and that the current valuation figure being used was incorrect as the subject property was for agricultural

use only. On both occasions the District Valuer declined to make any change to the capital valuation. The subject property was retained in the Valuation List. On 4 October 2016 the District Valuer's decisions were appealed to the Commissioner of Valuation. By Valuation Certificate dated 1 November 2016 the previous capital valuation of £70,000 was reaffirmed at the same figure. It is against this latter Valuation Certificate that the appellant now appeals to this tribunal. Clearly therefore this is a capital valuation appeal, with the appellant contending that the subject property ought not to be included in the Valuation List.

THE SUBMISSIONS

9. Based upon the submissions made, the primary focus of the tribunal must be upon whether or not the subject property ought to be rated. At this point, the tribunal does not need to address evidence of comparable valuations, but rather the tribunal needs to focus upon the fundamental issue of whether the subject property ought to be included in the Valuation List. For the respondent, 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 various decisions of the Valuation Tribunal***.***

10. On behalf of the respondent, it is submitted that 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 to undertake) 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 was also referred to the 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***. It is accordingly submitted, for the respondent, that the subject property could not be described as "truly derelict". Whilst it is conceded that this is a plain cottage which certainly needs repairs, refurbishment and internal fittings, it is basically sound and it could be described as being in an average state of external repair considering the age and character of the dwelling. The current capital value ascribed, £70,000, already reflects its basic nature and light roof, but it is still contended to be capable of repair and thus it is submitted that it should remain in the Valuation List. Regarding the issue of proximity to a farmyard, this can be seen from the aerial photography. On behalf of the respondent it is considered that this proximity does merit an allowance to the capital value (normally 10% in similarly circumstanced cases) but it is argued that this has already been reflected in the 20% allowance applied by the District Valuer. Whilst hay bales were noted in the subject property, it is not an agricultural building, as defined in the 1977 Order, being occupied together with agricultural land and used solely in connection with agricultural operations thereon. It is contended that there has been no adaptation made for agricultural use and that no livestock appear to have been kept in the subject property. Reference is also made 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.

11. For the appellant, in both written and oral submissions, it is contended that the proposition that a hereditament still exists and that the subject property is not truly derelict and that, with a reasonable amount of repair works it could be made suitable for a dwelling, is unsustainable. It is observed that the subject property in ***Wilson v Coll*** consisted of a two-bedroom semi-detached 1930s property that had been vacant for a period of only five years at the time of hearing, whereas the subject property in the instant case consists of a shell of a building constructed in the mid-1800s from masonry rubble, which has never had central heating or been connected to a sewerage system. It has a (damaged) asbestos roof. The subject property has been used solely in connection with agricultural operations for in excess of 25 years without any domestic occupancy throughout that period. It is contended that the subject

property is truly derelict and that it should consequently be removed from the Valuation List. The appellant strenuously disagrees with the respondent's contention that the subject property is not an agricultural building, as defined in the 1977 Order. It is contended by the appellant that the subject property clearly meets both of the required criteria: it is occupied together with agricultural land and it is used solely in connection with agricultural operations thereon. This has been the state of affairs since 1990. It is also contended that it is incorrect for the respondent to state that the building has not been modified for agricultural use. The subject property has been modified for agricultural use as all plumbing/kitchen fixtures and fittings have been demolished and removed thereby reducing the building to a bare structure comprising walls, floor and an asbestos roof. These modifications were made to allow the building to be used for agricultural storage. This is confirmed by the observation that hay bales were stored in or at the subject property. It is thus contended by the appellant that the subject property consists of an agricultural building and is therefore exempt from rates. The alternative argument advanced by the appellant is that this is a truly derelict property and that it should accordingly not be included in the Valuation List.

THE TRIBUNAL'S DECISION

12. The tribunal has carefully noted the evidence and the respective submissions made by both parties. These have been clearly and carefully articulated. The tribunal has found this to be most helpful in reaching a determination. The central issue to be determined is whether or not the subject property ought to be included in the Valuation List as a hereditament. The tribunal has been referred to the case of ***Wilson v Coll.*** As has been previously observed in cases heard prior to this (for example in ***Whitehead Properties Ltd v Commissioner of Valuation***) ***Wilson v Coll*** is not binding upon this tribunal in Northern Ireland, but the case has been taken into account by the Valuation Tribunal in reaching a number of determinations in cases of this type. It is accordingly proposed to make a relatively summary commentary, taking into account observations made in a number of previous cases. In ***Wilson v Coll*** Mr Justice Singh examined the proper approach to be taken concerning

whether or not there is, or continues to be, a hereditament, suggesting that 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. Accordingly, it was suggested that 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 that case, the determination was that the crucial distinction was not between repairs which would be economic to undertake or uneconomic, as such a distinction was simply absent from the wording of the statutory provisions underlying the legal regime. To a material extent, Northern Ireland domestic rating law, in similar fashion, does not include any "economic test", as such. The tribunal is not bound to follow the approach taken in ***Wilson v Coll*** and is free to determine the matter as it sees fit. However, it would need to identify a proper basis for taking an entirely different approach. The general approach taken by the Valuation Tribunal accords with ***Wilson v Coll***; however, this latter has been expressed as being subject to an important qualification. In this respect, it is clear that a potential absurdity might otherwise arise if a literal approach deriving from ***Wilson v Coll*** were to be taken to an extreme. A truly derelict property, that is to say one that by any assessment ought properly not to be included in the Valuation List, shall readily occupy a position of unarguable dereliction at one end of the notional spectrum. At the other end of that spectrum, many unoccupied properties might indeed require relatively minor reinstatement or repair works to render any such readily habitable. In the absence of any specific provision expressly enabling the tribunal to take economic factors into account, how therefore is a "reasonable amount of repair works" to be assessed, on a case-by-case basis, concerning properties existing at various points along that notional spectrum? Very evidently it would be wrong to include a property on the Valuation List which required an "unreasonable" amount of repair works. How, therefore, is the concept of "reasonableness" to be tested?

13. As was observed in ***Whitehead Properties Ltd v Commissioner of Valuation***, "reasonableness" is the standard for what is fair and appropriate under ordinary circumstances. It epitomises the manner in which a rational

and just person would have acted; it is assessed objectively. However, what is reasonable or otherwise cannot be assessed if one entirely disregards the true realities, including those which would most impact upon the decision-making of any reasonable person. Such a 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, statutory considerations, reasonableness cannot entirely disregard the issue of potential expenditure in the context of the inherent worth and individual circumstances of any property, both before and after repair and reinstatement. Regrettably, the learned judge in ***Wilson v Coll***, did not, it seems, proceed to give any account of or guidance as to how the concept of "reasonableness" might be tested or assessed. This tribunal observes that is possible to expend an unreasonable sum upon the repair of a nearly worthless property. The same applies to the unreasonable investment of non-monetary work and effort. Any truly derelict property (existing at the end of the notional spectrum) might, by the expenditure of an unreasonable amount of money or time and labour, be restored to a condition where it could be occupied as a domestic dwelling and thus be rated as a hereditament. To do so, in the common-sense estimation of most people, would probably be to take an unreasonable or indeed an irrational course of action.

14. 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 of the relevant facts and information. Any undue restriction or any overly rigid approach might otherwise lead to the absurdity alluded to above.

15. For these reasons, each case must be adjudged specific to its own facts. On the facts of the present case, the tribunal observes what is, in effect, a shell of

a building. It has not been occupied as a dwelling for many years. Upon the evidence, the building has been used, on an ad hoc basis, for some agricultural storage. It has been maintained basically intact and roofed (albeit with a damaged asbestos roof) both for that reason and also apparently on account of some familial connections to the past. It is clearly the case that it would be impossible (or next to impossible) to construct within the restricted site boundaries any effective septic tank, together with the necessary soakaways or spreader drains. There is no evidence that mains sewerage is available. Examining this specific issue in the light of all of the evidence, the tribunal cannot make any manner of an assumption that the owner of the subject property might be able to gain a legal easement or wayleave for the foregoing purpose from any neighbouring landowner. Indeed, when closely questioned on this topic by the tribunal when the aerial view photography was being inspected in the course of the hearing, this issue became entirely clear. This is, without doubt, a shell of a building with no current or recent purpose other than for ad hoc agricultural usage. It would require an unreasonable amount of repair, reinstatement and other works to be conducted, given all of the current circumstances, to place the building in a state where it could be properly and reasonably occupied as a dwelling. The tribunal has taken note of the earlier decision of the Valuation Tribunal in the case of ***John McGivern v Commissioner of Valuation for Northern Ireland [NIVT 15/13]***. The present domestic rating appeals regime permits any party to make successive appeals against successive determinations of the Commissioner of Valuation in regard to the same property. This tribunal is not bound by any earlier determination of the Valuation Tribunal. It is entitled to hear any matter afresh, as regards evidence and submissions. It may reach its own determination irrespective of any view which might have been previously taken by an earlier tribunal concerning the same property. No binding legal authority has been drawn to the tribunal's attention, nor is the tribunal aware of any such. Accordingly, this tribunal approaches the matter afresh and with a wide measure of judicial discretion available. The tribunal has reached a decision in the case upon the basis of all of the evidence and upon the submissions advanced in this appeal and by taking any relevant statutory provisions and other considerations into account. Hopefully it has done this by applying an entirely realistic and a common-sense approach. Nothing in the specific facts

of this case shall, in turn, have any direct bearing upon the specific facts of any other case, as each case shall have unique and fact-specific issues, requiring an individual determination upon a case by case basis. Having conducted a full assessment of the matter, the tribunal's unanimous determination is that the subject property ought not to be included in the domestic capital Valuation List.

16. This being so, the appellant's appeal succeeds and the tribunal Orders that the subject property shall be removed from the Valuation List.

James V Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 15 August 2017