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: 17/18

STEPHEN MURPHY – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND -RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr Brian Reid FRICS and Mr Peter Somerville

Date of hearing: 9 October 2019, Belfast

DECISION

The unanimous decision of the tribunal is that the subject property ought to be included in the domestic capital 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"). This matter was listed for hearing on 14 August 2019. However, the appellant, due to personal circumstances, sought an adjournment of the case and by order of the tribunal dated 14 August 2019 the matter was adjourned. The matter was then listed on 9 October 2019. At the hearing of this matter the appellant was present and the respondent was represented by Mr Gary Humphrey and Ms Seline McClelland.

2. The appellant by Notice of Appeal, appealed against the decision of the Commissioner issued on 5 September 2018.

3. This appeal is in respect of the valuation of a property situated at 118 Nursery Road, Gracehill, Ballymena, County Antrim, BT42 2QD ("the subject property").

The Law

4. 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.

5. 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".

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

The Evidence

7. The tribunal heard oral evidence. The tribunal had before it the following documents:

(a) The Commissioners Decision issued on 5 September 2018;
(b) The appellant's Notice of Appeal dated 14 September 2018;
(c) A document entitled 'Presentation of Evidence' dated 6 November 2018, prepared on behalf of the respondent Commissioner by Seline McClelland BSc (Hons) MRICS and submitted to the tribunal for the purposes of the hearing;
(d) Email on behalf of the appellant dated 17 January 2019;
(e) Response from the respondent;
(f) Email from the appellant dated 25 February 2019;
(g) Response from the respondent dated 8 April 2019;
(h) Email from the appellant;
(i) Notice of adjournment dated 14 August 2019;
(j) Correspondence between the parties.

The Facts

(1) The subject property is a pre 1919 detached house. It has a gross external area (GEA) of 170.9m^2 plus an outbuilding of 36.6m^2. The capital value has been assessed at £145,000.

(2) By way of background, on 19 September 2011 the subject property was deleted from the valuation to allow for renovations to it. On 16 September 2016 a completion notice case was registered and a completion notice was issued specifying a three month completion period. Thereafter, on 29 March 2017 the subject property was entered into the valuation list with a capital valuation of £145,000. On 20 April 2018 the appellant submitted that the property was still derelict. However, the property was considered capable of beneficial occupation and no change was made to the capital valuation of the subject.

(3) An appeal having been made against this decision, Ms McClelland met with the appellant and carried out an external inspection of the property and a certificate of valuation was issued making no change to the valuation.

(4) The appellant appealed this decision to this tribunal.

(5) The appellant contends that the property is not habitable and should not be retained in the valuation list.

The Appellant's Submissions

8. In relation to the issue as to whether the property should remain in the list as a hereditament, the appellant states that the subject property belongs to a farm and forestry business. The building is currently used as a storage facility and contains tools, feed etc.

9. Certain works have been carried out to the property by a public body in the form of installation of windows and doors and the appellant argues that the subject property cannot be occupied for certain reasons until these are removed.

10. As to the condition of the subject property itself, the appellant states that it has no electricity, water, toilets, kitchen, or heating in it. The roof of the subject property is leaking. There are clay floors in some areas of the subject property. The appellant states that the subject property has rising damp in it and no allowance has been made by the respondent for this. The appellant also states that the property has suffered extensive flooding due to burst pipes affecting ceilings and floors throughout.

11. The appellant indicated that it would cost at least £200,000 to bring the subject property into a fit state. The appellant admitted that he could easily

demolish the building but he considered it better to retain the structure and that someone could realise its use as a dwelling.

12. He further states that no allowance has been made for the derelict area attached to the house in that this does not have any windows or doors in it.

13. In his notice of appeal, the appellant states that no internal inspection has been carried out by the valuation team. At hearing the appellant stated that he did not realise that the valuer from the respondent would require internal access and he had no keys to enter the property on the date of inspection. He did however submit photographs of the property to the respondent at a later stage and these photographs are referred to in the respondent's Presentation of Evidence.

14. The appellant states that he believes that the comparables used by the respondent are not comparable to the subject in terms of age, structure or internal repair. He states that a more realistic comparison is 71 Nursery Road which is only 0.9 miles from the subject and is of similar age and size.

15. In the light of these matters the appellant contends that the property should be exempt from domestic rates.

The Respondent's Submissions

16. In the Commissioner's Presentation of Evidence to the tribunal Ms McClelland confirmed that she inspected the exterior of the subject property. The appellant was not able to provide internal access to the property at the date of inspection but later submitted photographs which she considered and incorporated into the Presentation of Evidence.

17. In relation to the derelict area attached to the house the respondent indicated that this is an outbuilding of 36.6m^2 but that due to its repair no value had been attributed to it in the valuation.

18. As to the condition of the subject property, the respondent stated that the property has been vacant since 2008. Therefore, it would be difficult to ascertain if any damp in the subject was the cause of lack of maintenance or an external repair issue. The respondent noted that the slate roof was in reasonable repair, the window frames required replacement, the doors were sound, the rainwater goods needed cleaned out but were in average repair and the external walls had some hairline cracking but this was not considered significant. The chimneys required repointing.

19. The respondent contends that the correct approach as to whether a hereditament exists is as outlined in *Wilson* v *Coll (Listing Officer).* In relation to the present appeal the respondent states that the subject property is a hereditament.

20. 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:

	Address	Description	Gross external area	Capital value
1	124 Nursery Road, Gracehill, Ballymena, County Antrim.	Pre 1919 detached house (photograph attached)	164m^2	£140,000
2	131 Nursery Road, Gracehill, Ballymena, County Antrim.	Pre 1919 detached house (photograph attached)	190m^2	£155,000
3	128 Caddy Road, Randalstown, County Antrim	Pre 1919 detached house (photograph attached)	180m^2	£165,000

21. In relation to the property at 71 Nursery Road, the respondent stated that this property has been removed from the valuation list as it is in use as an agricultural building.

The Tribunal's Decision

22. 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

23. In relation to the listing issue the tribunal has considered recent judgments of the Northern Ireland Valuation Tribunal in *Whitehead* v *Commissioner of Valuation* and in *McGivern* v *Commissioner of Valuation*. 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?
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> 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.
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> 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 these 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?
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> 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 members 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."

24. In another decision of the Northern Ireland Valuation Tribunal, that of *Lindsay* v *Commissioner for 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."

25. 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 premises be occupied as a dwelling? In this regard the tribunal has to take a broad view of all the facts relevant to this case applying the decision-making factors included in the *Whitehead* case.

26. The appellant has pointed out significant issues with the property. He states that it has no electricity, water, toilets, kitchen, or heating in it. The roof of the subject property is leaking. There are clay floors in some areas of the subject property. The appellant states that the subject property has rising damp in it and no allowance has been made by the respondent for this. The appellant also states that the property has suffered extensive flooding due to burst pipes affecting ceilings and floors throughout. He further indicates that it would cost at least £200,000 to bring the property into a fit state, although he had no formal estimates or costings to justify this figure.

27. As against this, the respondent argues that the slate roof was in reasonable repair, the window frames required replacement, the doors are sound, the rainwater goods needed cleaned out but are in average repair and the external walls had some hairline cracking but this was not considered significant and the chimneys require repointing.

28. The issue of the respondent being afforded access to the interior of the subject was discussed at the hearing of this matter. It is clear that the appellant met with the respondent, by appointment, and gave access to the exterior of the property. For whatever reason the appellant did not have keys with him on the day to grant access to the interior. However, the appellant was afforded the opportunity by the respondent to send in photographs of the interior which he duly did. These have been incorporated into the respondent's Presentation of Evidence.

29. 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 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 this tribunal recognises that each case will be such that it has to be considered on its own merits.

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

31. If the tribunal is satisfied that a hereditament exists, one of the statutory assumptions in Northern Ireland rating law is that the property is 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

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

33. The appellant suggested that 71 Nursery Road, Gracehill was a suitable comparable. However, the respondent indicated that this property has been removed from the valuation list as it is in use as an agricultural building. Therefore, the tribunal has not taken this property into account as it is not in the valuation list.

34. In relation to the comparables presented by the respondent in this case the tribunal finds that the most helpful is 124 Nursery Road, Gracehill, Ballymena. This is in close proximity to the subject on the Nursery Road. It is slightly smaller than the subject and has a capital valuation of £140,000.

35. The capital valuation of the subject is also supported by the valuation of 131 Nursery Road, Gracehill, Ballymena. This property again is situated on the Nursery Road. It is slightly larger than the subject and has a capital value of £155,000.

36. The third comparable at 128 Caddy Road, Randalstown is further away from the subject but is in the same electoral ward as the subject. This property is bigger than the subject and has a valuation of £165,000.
37. Thus, the comparables put forward by the respondent support the capital valuation of the subject property at £145,000.

38. Therefore, in this case 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.

Signed: Mr Charles O'Neill

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 13 November 2019