**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 5/19**

**TERRY MCINTYRE ESQ – APPELLANT**

**AND**

**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman:**
**FRANCIS J FARRELLY ESQ**
**(LEGAL)**

**Members:**
**BRIAN REID ESQ**
**(VALUER)**
**and**
**GARRY MCKENNA ESQ**
**(LAY)**
**Date of hearing: 28 September 2021**

**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. Mr McIntyre, the appellant, owns and lives with his wife at 122 Upper Knockbreda Road, Belfast.

2. A valuation certificate was issued by Land and Property Services on 26 April 2019. It placed a capital value on the property of £350,000.

3. The appellant arranged to have building works carried out. His appeal focuses upon the period when the works were carried out. In summary, he argues that

during that period, when the property was uninhabitable, it should not have been liable for rates. He does not otherwise dispute the valuation.

**4.** The appellant attended the appeal hearing along with his wife. It was clear from their letters and from Mrs McIntyre's evidence at hearing that they feel strongly about this issue and have made a considerable effort in pursuing their appeal. Mrs McIntyre most ably presented their appeal.

**5.** The respondent was represented by Mr Jeffrey and we heard evidence from a Mr Crawford who gave evidence in relation to the valuation and works.

**The facts.**

**6.** We find the underlying facts to be as the appellant states. We reach this conclusion based upon his evidence and that of his wife, the correspondence and the photographs exhibited. The photographs indicate the extensive works that would be carried out to the property.

**7.** We accept that the appellant advised the respondent at the start of the works and the respondent indicated that a site visit was likely within six weeks. However, this did not occur until four months later. the respondent's presentation contains a precise chronology and we have no reason to doubt its accuracy. It indicates that on 9 October 2018 the appellant advised District valuer of the ongoing renovation works. An inspection took place on 27 February 2019 when work was in progress. Subsequently the value remained unchanged. The decision of the Commissioner of Valuation was appealed and that was an inspection on 15 April 2019, with the property retained in the valuation list. There was an appeal to the tribunal.

**8.** During the course of the works there was significant disruption. The appellant and his family lived in alternative accommodation for around nine months until the works were completed. At times the property did not have a kitchen, toilet, bathroom, source of heat, electricity in the rooms nor a water supply.

**9.** We find that because of the works being carried out the family were not able to enjoy the house and during a period of approximately nine months it was not capable of occupation.

**10.** We also accept that the respondent had adopted a practice whereby if works were to be carried out, such as the appellant undertook, they would suspend the rates liability. Typically, there would be a site visit with the valuation member and a discussion about likely completion dates and then a period of time would be allowed when rates were not chargeable. Applying this practice, the appellant would have been in a similar position. However the respondent has now ceased this practice in light of the decision of Wilson –v-Coll set out below

**11.** The respondent now takes the stance that the property remains liable for rates irrespective of the fact that house was not habitable because of the ongoing works. In support of this reliance is had to the decision of Wilson –v- Coll, a decision cited in almost all appeals by the respondent.

Wilson –v- Coll [2011] EWHC 2824

12. 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.

13. `Heriditament'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.

14. Mr Justice Singh heard the appeal. He 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.

15. 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.

16. In the present instance the appellant has intended to improve his property by undertaking this work. It was not derelict before the repairs were undertaken. Even if it were, the very fact work has been undertaken indicates Mr McIntyre and his builder felt it was capable of being made habitable.

17. Applying this decision, we do not see any scope for rates relief on a property during the ` in between stage', covering the period when works were ongoing and the property was uninhabitable until the work is concluded.

18. We accept in the past the respondent has made an allowance for other householders. Understandably, the appellant feels a sense of grievance when others were treated differently before. However, our task is to see if the decision that has been made complies with the law. We do not have any jurisdiction over administration.

19. The respondent's bundle contains the Valuation Tribunal decision of Baiyelo heard on 18 August 2017.This is a decision of the Valuation Tribunal for England and is not binding upon this. 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.

20. Our conclusion is that in light of the reasoning advanced in Wilson –v- Coll the respondent's decision is correct. We appreciate that the appellant and his wife feel aggrieved at the apparent unfairness of having to pay rates upon property which they can occupy. This is compounded by the fact that in the past they would have been afforded relief. We were very sympathetic to their cause but we are required to apply the law as it is understood.

**Chairman: Farrelly Esq**
**Northern Ireland Valuation Tribunal**
**Date decision recorded in register and issued to the parties: 14 February 2022**