

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: 40/21

DERMOT CURRY AND MARIAN CURRY - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr Hugh McCormick and Ms Noreen Wright

Date of hearing: 23 August 2022, Belfast

DECISION

The unanimous decision of the tribunal is that the subject property is properly included in the valuation list and that the Appellant's appeal is dismissed.

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"). This matter was listed for hearing on 23 August 2022.
2. The hearing proceeded by way of written submissions, both parties being content to proceed on this basis. The matter was listed for hearing on 21 June 2022 and unfortunately had to be adjourned on this date and proceeded on 23 August 2022.
3. The appellants by Notice of Appeal, appealed against the decision of the Commissioner issued on 18 November 2021.
4. This appeal is in respect of the valuation of a property situated at 56 Annacloy Road, Downpatrick, County BT30 9AQ (the subject property).

The Law

5. 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.
6. 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”.

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 no oral evidence. The tribunal had before it the following documents:
 - a. The Commissioner’s Decision issued on 19 October 2021
 - b. The appellant’s notice of appeal received by the tribunal office on 11 November 2021;
 - c. A document entitled Presentation of Evidence dated 28 February 2022, prepared on behalf of the respondent and submitted to the tribunal for the purposes of the hearing;
 - d. Correspondence between the parties.
 - e. Correspondence between the parties and the tribunal office.

The facts

8. The subject property is a privately built pre-1919 detached cottage. It has habitable space of 90.3m². The capital value has been assessed at £80,000.
9. By way of background, as outlined in the Presentation of Evidence, the history of this case would appear to be as follows:

01.04.2007 – the capital valuation of the property was reduced from £64,000 to £35,000 due to the poor state of the subject property. An agricultural allowance which had been applied was removed at this time as the property was no longer occupied in connection with agricultural land.

28.01.2021 – an application was received by the District Valuer advising that the subject property was undergoing renovation and improvement works. The District Valuer determined that the property should remain in the valuation list for the duration of the works and following an inspection of the property on 07.06.2021 the capital value was reassessed at £80,000 effective from 01.04.2022.

29.07.2021 an application was received by the District Valuer. It is stated that this did not dispute the reassessed capital valuation of £80,000 but the appellants did

not agree with the decision to retain the subject in the valuation list throughout the duration of the works. A decision of no change was issued on 30.09.2021.

04.10.2021 – the appellants appealed to the Commissioner of Valuation. A decision of no change was issued on 19.10.2021.

16.11.2021 – the decision of the Commissioner of Valuation was appealed to this tribunal.

The appellant's submissions

10. The appellants indicated in their notice of appeal that the property is a two-bedroom cottage, built on to an old barn. They indicate that the property has habitable space of 88.9m² rather than the 90.3m² as measured by the respondent.
11. They indicate that it has lay vacant since 1980 and is unfurnished. It has deteriorated badly during this time due to damp, water ingress, and vandalism. The main problems stated with the property in January 2021 were as follows:
 - No electricity connected to the property
 - No heat to the property
 - No bathroom or functioning toilet
 - No water supply to the property (cut off)
 - Damaged roof at rear allowing water to cause severe damage to property (plaster falling off walls, ceiling collapsing, woodwork damage etc)
 - Rising damp throughout and water penetration through stone walls
 - Woodworm throughout the property on sills, doors and frames etc.
 - Single glazed windows broken and boarded up, frames damaged, and rear doors have fallen off
 - Solid floor crumbling away and fireplace lining badly damaged (dangerous to light).
12. The appellants further indicate that they had been told by two builders that the property was beyond repair. However, they did find a builder who agreed to repair the property and work started in January 2021. The appellants were prepared to pay more than necessary for restoration as it has been in his family for years. It has cost them many thousands of pounds to date.
13. Their notice of appeal further states that the appeal is about the value of the property from 2018 to 2020 at a valuation of £35,000 and a bill for rates. The appellant states that this appeal documentation had been lost and when contact was made to the respondent a valuer visited the property in June 2021 and measured for a new valuation.
14. The appellant states that he is seeking a reduction in the value of the property in January 2021.

The respondent's submissions

15. On behalf of the Respondent, it was indicated that the subject property has habitable space of 90.3m². It has been inspected on 7 June 2021.
16. The respondent indicates that it can only consider the state and circumstances as they existed at the date of the District Valuer's certificate i.e., 30.09.2021. It is stated that the respondent is therefore unable to consider the period 2018 to 2020.
17. In relation to the renovation works commenced in January 2021 and were close to completion in May 2021. These included the addition of a sunroom and porch, the installation of a new kitchen and bathroom, new ceilings, new windows and doors, weather proofing and some roof repair works. The only remaining element of renovation outstanding at the time of the appeal was the installation of a heat cable in the stonework of the bedroom and living room to limit damp and moisture exposure.
18. The respondent states that in applying the hereditament test at the relevant date (30.09.2021) the respondent is of the view that the subject was capable of occupation as a dwelling and was correctly included in the valuation list. The programme of renovation works has illustrated that the subject property has been capable of repair with a reasonable amount of works at all stages. Therefore, the property did not qualify for removal from the valuation list at any point prior to 30.09.2021.
19. The respondent is of the view that notwithstanding these comments about the property condition for rating purposes she had to have regard to the hereditament test as described in *Wilson v Josephine Coll (Listing Officer)* [2011] EWHC 2824 (*Wilson v Coll*). In accordance with this test the respondent is of the view that the property should still be maintained in the valuation list. Once it has been established that a hereditament exists then the statutory assumptions must be applied including that the property must be assumed to be in an average state of internal repair and fit out.
20. In relation to the capital value of the subject property, reference was made to a list of comparable evidence stated to be in the same state and circumstance as the subject property. details of these comparable were set out in an Appendix to the Presentation of Evidence with further particulars of same, including photographs. These were all capital value assessments, details of which are as follows:

68 Annacloy Road, Downpatrick, BT30 9AQ, which is a privately built pre 1919 detached cottage with habitable space of 101.2m² and outbuilding of 46.9m². It has full heating. The capital value of the property is £130,000.

81 Annacloy Road, Downpatrick, BT30 9AJ, which is a privately built pre 1919 detached cottage with habitable space of 71m². It has no heating. The capital value of the property is £92,500.

82 Annacloy Road, Downpatrick, BT30 9AJ, which is a privately built pre 1919 detached cottage with habitable space of 114m². It has full heating. The capital value of the property is £130,000.

31 Cargagh Road, Downpartick, which is a privately built pre 1919 detached cottage with habitable space of 82.78m² and outbuilding of 140.8m². It has full heating. The capital value of the property is £95,000.

The Tribunal's Decision

There are several issues to consider in this relatively complex matter.

21. Firstly, the appellant's state that the appeal is about the valuation of the property from 2018 to 2020. However, the decision that has been appealed to this tribunal is the decision of the Commissioner of Valuation and the respondent states that this is the decision made on 30.09.2021 and this is what the tribunal must consider. The real subject matter of the appeal therefore from the appellants point of view is the fact that the subject property was included in the valuation list from January 2021 to June 2021.
22. In this regards the appellant did submit an application in June 2021 but the property was not inspected until 07.06.2021 and the capital valuation was reassessed at £80,000.
23. Another application was submitted to the District Valuer on 29.07.2021 and the district Valuer issued a certificate of no change on 30.09.2021. This was appealed to the respondent.
24. The respondent states that the appeal can only take account of the state and circumstances of the subject property at the date of the District Valuer's certificate ie 30.09.2021. It has not provided the legislative basis for this, especially given that the decision at the root of this appeal is the decision of the District Valuer in respect of an application to the District Valuer on 29.07.2021.
25. In any event the main issue is whether the subject property should have remained in the valuation list for the duration of the works. Both the appellant and respondent have made submissions on this point. This is commonly called a listing issue.
26. In relation to the listing issue the tribunal's attention was drawn by the respondent to the decision in *Wilson v Coll* and in particular the decision of Singh J. In the light of this the respondent stated that the question the tribunal had to decide was "having regard to the character of the property and a reasonable amount of repair works could the premises be occupied as a dwelling?".
27. In relation to this matter the tribunal has considered recent judgments of the Northern Ireland Valuation Tribunal including those in *Whitehead v Commissioner of Valuation* (12/12) and in *McGivern v Commissioner of Valuation* (19/16).

28. 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?

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.

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 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?

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.”

29. In another decision of the Northern Ireland Valuation Tribunal, that of *Lindsay v Commissioner of 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.”*

30. Thus, 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 subject property be occupied as a dwelling? In this regards the tribunal has to take a broad view of all the facts relevant to this case in applying the decision-making factors included in the *Whitehead* case.
31. Each of these cases turned on their own specific factual circumstances. As the President of the Valuation Tribunal stated in *McGivern v Commissioner of Valuation*
“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 the relevant facts and information. Any undue restriction or any overly rigid approach might otherwise lead to the absurdity alluded to above.

For these reasons, each case must be adjudged specific to its own facts.

32. The Appellant has indicated that the subject property is in a very bad state of repair. He has outlined the state of the subject property as stated earlier in this decision.
33. As against this the respondent stated that the property was capable of occupation as a dwelling and was correctly included in the valuation list.
34. The tribunal has to take the broadest common-sense view of the factual matters in the application of the law and to view things in the round. Applying this approach to this case and weighing up the various arguments advanced and the various considerations which are material to the determination, the tribunal’s decision unanimously is that the subject property properly falls to be included in the rating list as a hereditament. The Appellant’s appeal on this point fails accordingly. Having concluded on this point it fails to consider the capital valuation of the subject property.

The capital valuation issue

35. The appellants state that the capital value of the subject property should be £5,000 – a site value. No comparable evidence has been submitted in relation to this.
36. The respondent has provided comparable evidence as outlined in the Presentation of Evidence to support its unadjusted valuation of the subject property at £80,000.

37. In relation to the comparables submitted by the respondent the tribunal finds that the most helpful is 68 Annacloy Road, Downpatrick. This is larger than the subject and has a capital valuation of £130,000.

38. This is further supported by the other comparables submitted by the respondent. Indeed, from the correspondence between the parties and the appellants' notice of appeal the capital valuation of £80,000 is not disputed.

Conclusion

39. In this case the tribunal is satisfied that the subject property is a hereditament and should be included in the valuation list. It finds that the capital value to be £80,000.

40. In the light of the above, the tribunal is satisfied that the Appellant's appeal is dismissed, and the Commissioner's decision is upheld.

Signed Mr Charles O'Neill

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: