

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: 43/21

MAURICE MONTGOMERY AND JEAN MONTGOMERY - 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 25 November 2021.
4. This appeal is in respect of the valuation of a property situated at 34 Clonetrace Road, Broughshane, Ballymena, County Antrim, BT43 7HY (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 25 November 2021;
 - b. The appellant's notice of appeal received by the tribunal office on 17 December 2021;
 - c. A document entitled Presentation of Evidence dated 8 April 2022, prepared on behalf of the respondent and submitted to the tribunal for the purposes of the hearing;
 - e. Correspondence between the parties and the tribunal office.

The facts

8. The subject property is a privately built pre-1919 detached house. It has habitable space of 189.8m². The capital value has been assessed at £140,000. This is an unadjusted capital value of £155,000 less a 10% allowance as the subject property is within a working farmyard.
9. By way of background, as outlined in the Presentation of Evidence, on 24 April 2013 the District Valuer determined that an agricultural allowance should continue to be applied to the subject property following a change of occupier. On 29 September 2017 the District Valuer considered that the agricultural allowance should be removed, and no change was made to the capital value of the property which had been assessed at £155,000. On 7 August 2020 the District Valuer on review of the valuation issued a decision of no change to the valuation.
10. On 28 October 2021 the appellants submitted an application to the District Valuer on the basis that the subject property was derelict or demolished. A decision of no change was issued on 28 October 2021. This was appealed to the Commissioner of Valuation who amended the capital valuation to £140,000 on 18 November 2021 to reflect the position of the subject within a working farmyard. This decision has been appealed to this tribunal.

The appellant's submissions

11. The Appellant indicated in his notice of appeal that the subject property has not been occupied since 2018 and is a very bad state of repair. The water tank burst due to frost and the ceilings have come down. Water has come through the light fittings and so for health and safety reasons the electricity and water had to be disconnected. The appellants state that the subject property is not fit to be occupied and so is being used as a farm store.
12. The appellants believe that the appropriate capital valuation of the property should be £100,000.

The respondent's submissions

13. On behalf of the Respondent, it was indicated that the subject property had been inspected on 22 November 2021. The respondent stated that the appellant had indicated that the subject property had been vacant for approximately three years.
14. In relation to the submission that the property is occupied as an agricultural building, the respondent states that the property does not conform to the definition of this. Although there were some items and materials that could be used in connection with farming the majority of the space is vacant and the internal areas remain identifiable as habitable space. The respondent also refers to the fact that the subject property has not been adapted in any way to facilitate use as an agricultural building. Internally there remains a kitchen and bathroom as well as household furniture, furnishings, fixtures and fittings.
15. The respondent states that the subject property could be made fit for habitation with a reasonable amount of repair works. The property appears to be weathertight, and the fabric of the building is intact.
16. The respondent is of the view that notwithstanding these comments about the property condition for rating purposes he 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. The respondent goes on to assess the capital valuation of the subject property in the manner outlined above.
17. 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 comparables 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:

41 Clonetrace Road, Broughshane, BT43 7HY which is a privately built pre-1919 detached house which is in average repair. It has habitable space of 178m² with no heating. It has a capital value of £150,000.

57 Clonetrace Road, Broughshane, BT43 7HY which is a privately built pre-1919 detached house which is in average repair. It has habitable space of 177m² with an outbuilding of 171m². This property has full heating. It has a capital value of £155,000.

60 Clonetrace Road, Broughshane, BT43 7HY which is a privately built pre-1919 detached house which is in average repair. It has habitable space of 170m² with ancillary space of 12m² and a garage of 34m². It has full heating. It has a capital value of £165,000.

61 Clonetrace Road, Broughshane, BT43 7HY which is a privately built pre-1919 detached house which is in average repair. It has habitable space of 229m². It has full heating. It has an unadjusted capital value of £185,000.

The Tribunal's Decision

18. There are three main issues to be considered in relation to this case. These may conveniently be referred to as (i) the listing issue (ii) the capital value issue and (iii) the use of the property as an agricultural building. Each of these will be considered in turn.

The listing issues

19. 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?".
20. 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).
21. 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.”

22. 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.”*

23. 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.

24. 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.

25. The Appellant has indicated that the subject property is in a very bad state of repair. The water tank burst due to frost and the ceilings have come down. Water has come through the light fittings and so for health and safety reasons the electricity and water had to be disconnected. The appellants state that the subject property is not fit to be occupied and so is being used as a farm store. As against this the respondent states that the subject property could be made fit for habitation with a reasonable amount of repair works. The property appears to be weathertight, and the fabric of the building is intact. Helpfully the respondent has provided photographs of the interior of the subject property taken during the inspection of it.
26. 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.
27. Having concluded on this point it falls to consider the capital valuation of the subject property.

The capital valuation issue

28. The appellants state that the capital value of the subject property should be £100,000. No comparable evidence has been submitted in relation to this.
29. The respondent has provided comparable evidence as outlined in the Presentation of Evidence to support its unadjusted valuation of the subject property at £155,000.
30. In relation to the comparables submitted by the respondent the tribunal finds that the most helpful is 41 Clontrace Road, Broughshane. This is smaller than the subject and has a capital valuation of £150,000.
31. The capital valuation of the subject property is further supported by the capital valuation of 57 Clontrace Road, Broughshane. This is again smaller than the subject and has an outbuilding and has a capital valuation of £155,000.
32. The valuation of the subject is also supported by the other comparables submitted by the respondent.

33. This relates to the unadjusted capital value of the subject property which the tribunal finds to be £155,000. Due to the fact that the subject property is located within a working farmyard and is in proximity to a number of agricultural sheds a 10% reduction in the capital value has been applied by the respondent bringing the capital valuation to £140,000. The tribunal agrees with this valuation.

Use of the subject property as an agricultural building

34. The final issue for the tribunal to consider, for the sake of completeness is whether the subject property should be considered as being occupied as an agricultural building. If it is classed as such this would be removed from the list and would thus be exempt from rates.

35. In considering the legislation in this area, it is necessary to look at the definition of agricultural buildings. These are defined in Schedule 1 to the 1977 Order which states:

“(a) buildings occupied together with agricultural land and used solely in connection with agricultural operations carried on agricultural land, which is occupied, but does not include a building which is a dwelling house.

36. The tribunal finds in this case that the building is a dwelling house.

Conclusion

37. 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 £140,000 with the reduction applied to it. It finds that this is a dwelling house.

38. 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