

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: 17/19

MICHAELA NUGENT - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr H McCormick MRICS and Dr P Wardlow

DECISION

The decision of the Tribunal is that the appellant's appeal is dismissed, for the reasons stated.

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant had initially requested an oral hearing but then confirmed, by letter dated 23 September 2019, that she was content for the appeal to be disposed of by written representation. The matter was listed for a determination by the Tribunal on 7 December 2020.
2. The appellant, by Notice of Appeal (in Form 3), dated 4 September 2019 received by the Office of the Tribunal on 16 September 2019, appealed in respect of a listed hereditament situated at 54 Moneymore Road, Cookstown,

County Tyrone, BT80 8EH (“the subject property”). The appellant’s appeal was made concerning the issue of whether or not the subject property ought to be included in the Valuation List or whether it ought to be exempted.

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.

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 had before it the appellant’s Notice of Appeal to the Tribunal (Form 3) and the following:-

4.1 Copy of the Valuation Certificate dated 28 August 2019.

4.2 Copy of the appellant’s Notice of Appeal to the Commissioner of Valuation dated 4 September 2019.

4.3 Copy of a document dated 10 September 2020 entitled “Presentation of Evidence” prepared on behalf of the Commissioner, as respondent, by Mr Rory O’Brien MRICS and submitted to the Tribunal, which contained some coloured

photographs and which set forth written representations made to the Tribunal on behalf of the Commissioner.

- 4.4 Copy correspondence, including by email, between the Office of the Tribunal and the appellant and respondent.

The Rating History of the Subject Property

- On 19 March 2019 the appellant submitted an application to the District Valuer requesting that the subject property be removed from the Valuation List. The District Valuer reduced the Capital Value from £270,000 to £220,000 and a Valuation Certificate was issued confirming this on 23 July 2019.
- On 2 August 2019 the appellant submitted an appeal to the Commissioner and the subject property was inspected on 13 August 2019 and again in 27 August 2019. A decision of no change was made to the existing Capital Value of £220,000. A Valuation Certificate was issued confirming this on 28 August 2019.
- On 18 September 2019 the foregoing Valuation Certificate was appealed to the Valuation Tribunal.

Specific Issues Regarding the Condition of the Subject Property

5. From an inspection of the initially-available photographic evidence, the roof of the subject property appeared to be substantially intact, viewing from the front elevation. From the rear elevation, likewise, the main part of the roof (at two storey level) appeared to be substantially intact. However, there was a small single storey extension to the rear of the subject property which was understood to be a kitchen. In the Presentation of Evidence it was stated that

the subject property was inspected on 13 August 2018 when it was noted that what was described as being a “small area” of the kitchen roof had collapsed. The Tribunal had requested better quality copies of the photographs contained within the Presentation of Evidence and additional photographic evidence regarding the external condition of the subject property. Electronic copies of the Presentation of Evidence photographs were then provided and some additional photographs of the subject property, contained within an Addendum to the Presentation of Evidence. The appellant confirmed to the Tribunal in writing that she did not take objection to the inclusion of any additional photographs provided, albeit that these were provided by the respondent in the form of an Addendum to the Tribunal and copied to the appellant at a relatively late stage. In an email sent to the Secretary of the Tribunal dated 1 December 2020 the appellant stated, “These photos are years out of date. There is no house on that site.” She queried when these additional four photographs had been taken. On the basis of information provided by the respondent to the Tribunal it was clarified to the appellant that these photographs had been taken on one of the two visits to the subject property that had been conducted on 13 August and 27 August 2019 and, further, that the Presentation of Evidence related to the subject property at the time of the appellant’s appeal to the Tribunal. In a further communication of 1 December 2020 the appellant stated that it could be seen that the house was uninhabitable even at that point and that it was demolished shortly after these photographs had been taken. The Tribunal has not received any representation from the respondent taking issue with the latter assertion by the appellant that the subject property was demolished shortly after the taking of these photographs, so it accepts that evidence. These additional photographs in the Addendum in respect of what is described as being “the kitchen/rear return ceiling”, upon closer inspection, disclosed that the roofing materials were entirely missing from this part of the structure. An internal photograph taken from within that part of the structure make this latter entirely clear and all that remains is the roof structural timbers (which appear to be substantially intact) but with no membrane or felting, nor any slates or tiling left in position. That latter information was not at all clear from the photographs that were initially provided. The Tribunal is grateful for the further clarification provided in the Addendum evidence.

6. The Tribunal would wish to clarify that in any case of this nature, whereby it is argued by an appellant that any property ought not to be included in the Valuation List on account of adverse condition or dereliction, it is essential that the Tribunal shall be provided with the fullest and best quality evidence, in whatever form, in order to enable a proper assessment and adjudication to be conducted by the Tribunal concerning the external condition and any associated issues which might bear upon any legal issue to be determined from the relevant facts. This is a responsibility both of any appellant seeking to advance specific arguments of this kind, but also it is a responsibility of the respondent to the appeal in order to ensure that the Tribunal is afforded an opportunity to have the best possible evidence reasonably available.

General Matters Regarding the Subject Property

7. The subject property is located at 54 Moneymore Road, Cookstown, County Tyrone BT80 8EH. From the description contained in the Presentation of Evidence, the subject property was described as being a two-storey privately-built 1946-1965 detached house (built circa 1955), with associated outbuildings to the rear, situated on the Moneymore Road in Cookstown. It is stated in the Presentation of Evidence that the subject property, on inspection, was noted to be in a poor state of external repair owing to the extended period of time the subject property had been unoccupied. A section of the roof over the kitchen to the rear was noted to have collapsed, leaving that part of the subject property open to the elements. Internally the subject property was noted to be in poor condition, with evidence of damp and vandalism. The subject property had an oil fired central heating and double glazed windows. The description of the external condition including that relating to the partial collapse of the roof was borne out by the photographic evidence, including the additional Addendum photographs provided. The subject property was described as having habitable space (GEA) of 273 m² with a garage of 93 m². The Capital Value is stated to take account of an allowance afforded by the District Valuer. The property was inspected on 19 March 2019 following the application made to the District Valuer by the appellant requesting that the

subject property be removed from the Valuation List. After inspection, the Capital Value was reduced from £270,000 to £220,000 and a Valuation Certificate was issued confirming this revised Capital Value on 28 August 2019, against which the appeal is made.

THE SUBMISSIONS

8. In the Presentation of Evidence the respondent seeks to advance arguments based upon the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin)*** this being a judgment of the High Court in England. Indeed this is a case which has been the subject of some previous observations made in various decisions of the Valuation Tribunal. For the Commissioner it is argued that the subject property ought properly to be included in the Valuation List, for the reasons now discussed.
9. The appellant in the Form of Appeal states as follows: “*The house is completely inhabitable (sic) due to the vermin in the house, the fact that it has no roof and several broken windows. The house is a health and safety hazard and can’t be lived in*”. In the appellant’s Notice of Appeal to the Commissioner she states: “*The house has no roof on it and is completely inhabitable (sic) due to vermin and black mould growing on the walls. Windows are broken and the roof has collapsed*”.
10. It is noted that the appellant seeks to advance no argument expressly in this appeal regarding any issue other than the contention that the subject property ought not to be included in the Valuation List. There are no arguments made by the appellant regarding any of the comparables evidence, nor any submission made concerning what ought to be an appropriate Capital Value for the subject property, rather merely whether or not it ought to be included in the Valuation List. Accordingly, the primary focus of the Tribunal must be upon whether or not the subject property ought to be rated. The Commissioner’s arguments are ones that have been well-rehearsed on a number of occasions before the Tribunal, in earlier cases. These arguments centre around the case

of ***Wilson v Coll*** and it is submitted that this latter case is relevant in that it proposes the appropriate legal test to be applied to such matters. In summary, the test is a physical, rather than an economic, test. The critical distinction is not between repairs which would be economic to undertake (or uneconomic) but rather the proper distinction is between a truly derelict property which is incapable of being repaired to make it suitable for its intended purpose 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 case of ***Eric McCombe v The Commissioner of Valuation [NIVT 43/15]*** whereby the Tribunal in that case made reference to ***Whitehead Properties Ltd v The Commissioner of Valuation [NIVT 12/12]*** both of which cases make reference to ***Wilson v Coll***. It is accordingly submitted, for the Commissioner, that the subject property could not be described as “truly derelict”. Whilst it is conceded that the subject property is externally in poor repair, it is argued that, with the reasonable amount of repair work, the subject property could be occupied once again for the purpose of a dwelling.

THE TRIBUNAL’S DECISION

11. The Tribunal has carefully noted the evidence and submissions made by both parties, all the more so as there has been no oral hearing in this case. The respective positions in this appeal have been simply and clearly stated. The central issue to be determined by the Tribunal is whether or not the subject property ought to be included in the Valuation List, as a hereditament. As has been previously observed in Valuation Tribunal cases heard prior to this (for example in ***Whitehead Properties***) ***Wilson v Coll*** is not binding upon this Tribunal in Northern Ireland. Nonetheless, that case has been taken into account by the Tribunal in reaching a number of determinations. A short summary might perhaps be helpful. In ***Wilson v Coll*** Mr Justice Singh (as he then was) examined the proper approach to be taken concerning the issue of whether or not there is, or continues to be, a hereditament, in 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. It was suggested that the proper distinction was 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. However 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 English legal regime. Northern Ireland domestic rating law, similarly, does not include any “economic test”. The Tribunal is not bound to follow the approach taken in ***Wilson v Coll*** and it is free to determine the matter as it sees fit. However, as has been mentioned in previous determinations, the Tribunal would need to identify a proper basis for taking an entirely different approach. The general approach taken by the Tribunal in Northern Ireland over a number of years accords with ***Wilson v Coll***, but subject to an important qualification.

12. It is clear that a potential absurdity might arise if a strictly literal approach stemming from ***Wilson v Coll*** were to be taken to an extreme. Thus, a truly derelict property, one that by any assessment ought properly not to be included in the Valuation List, illustrates one end of the notional spectrum. At the other end, many unoccupied properties might require only relatively minor reinstatement or repair works in order to render these habitable. In the absence of any provision expressly enabling the Tribunal to take economic factors into account, how therefore is a “reasonable amount of repair works” to be assessed across this notional spectrum? It would be wrong to include a property on the Valuation List which required an “unreasonable” amount of repair works - but how may the concept of “reasonableness” be properly tested?

13. As was observed by the Tribunal in ***Whitehead***, “reasonableness” is the standard for what is fair and appropriate under ordinary circumstances. It is the objective standard of how a rational and just person would have acted. However, it cannot be assessed if one entirely disregards the true realities, including those which would most impact upon the decision-making of any reasonable person. Thus, any such person would not reasonably spend a very substantial amount of money upon the repair of a nearly worthless

property. If there is no statutory “economic test”, nonetheless (leaving aside, for the moment, statutory considerations), reasonableness cannot entirely disregard the proper context of inherent worth and the individual circumstances of any property, both before and after repair and reinstatement. As has been remarked previously, regrettably the learned judge in *Wilson v Coll* did not give any guidance as to how the concept of “reasonableness” might be assessed. It is possible to expend an unreasonable sum upon repair of a nearly worthless property. The same applies to the unreasonable investment of non-monetary work and effort. Of course any truly derelict property (existing at the end of the notional spectrum) by the expenditure of an unreasonable amount of money, or of time and labour, might be restored to a condition where it could be occupied as a domestic dwelling and thus be rated as a hereditament. However to do so, in the common-sense view of most people, would probably be to take an unreasonable or an irrational course. Having accepted 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 each individual case. A realistic and a common-sense approach needs to be taken. Any overly rigid approach might otherwise lead to the absurdity mentioned above and thus each case must be assessed upon its own facts.

14. On the facts of the present case, the Tribunal observes the subject property which has suffered the adverse effects of being unoccupied for a considerable period of time, with evidence of damp and apparently some vandalism. The single story structure to the rear has no roof coverings. The structural timbers however do appear intact. The main roof appears to be intact and there is no evidence of roofing materials otherwise damaged or missing. Some of the windows might have been broken. Nonetheless, it seems to the Tribunal that the general structure is significantly intact. On the notional spectrum referred to above, the condition of the subject property certainly exists towards the “better end” of that spectrum. The subject property is certainly far from being truly derelict.

15. The matter must be assessed at the point in time of the appeal being made against the Commissioner's decision. It appears to be that the subject property has since been demolished. That may be so, but the Tribunal's determination must be in regard to the appeal made to the Tribunal by the appellant, which is against the listing of the subject property in the Valuation List and the Commissioner's determination. Having considered all of the evidence, the Tribunal's judgment is that the subject property, at the time of the appeal, was properly to be included in the Valuation List.

16. Regarding the matter of the appropriate Capital Value, as no appeal has been expressly made by the appellant against the assessed Capital Value figure, the Tribunal nonetheless considered the comparables evidence as set forth in the Presentation of Evidence. The Tribunal notes the statutory presumption contained within the 1977 Order, Article 54(3). Thereby, any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown. In order to succeed in an appeal, any appellant must either successfully challenge and displace that statutory presumption of correctness or perhaps the Commissioner's decision, objectively viewed, must be seen by this Tribunal to be so incorrect that the statutory presumption must be displaced and the Tribunal must adjust the Capital Value to an appropriate figure. The Tribunal saw nothing in the general approach taken to suggest that the matter had been approached for assessment in anything other than the prescribed manner, as is provided for in Schedule 12 of the 1977 Order. It is noted that the appellant has not sought to put forward any challenge to the respondent's schedule of comparables nor any evidence or argument in an endeavour to displace that statutory presumption of correctness in respect of the valuation.

17. Noting the arguments made on behalf of the appellant and the response thereto, the statutory provisions specify that the Capital Value of the subject property shall be the amount which (on the statutory assumptions) the subject property might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date. Further, in estimating the Capital Value regard shall be had to the Capital Values of comparable properties in the same state and circumstances as the subject property. The Tribunal thus gave full consideration to all of the evidence and argument including to an analysis of the appropriateness of

selection and the weight to be attached to the properties put forward as comparables. The Tribunal examined in detail the five stated comparables put forward in evidence on behalf of the respondent, these being: (1) 42 Moneymore Road, Cookstown BT80 8EH, (2) 71 Moneymore Road, Cookstown BT80 8EH, (3) 40 Templereagh Road, Stewartstown BT71 5PJ, (4) 69 Lissan Road, Cookstown BT80 8QX and (5) 25 Lissan Road, Cookstown BT80 8EN. The Tribunal conducted an analysis of the specific state and circumstances in respect of each of these contended comparable hereditaments, with reference to any material evidence emerging which might assist in the scrutiny of the assessment of the proper Capital Value of the subject property.

18. All of the selected comparables introduced into evidence on behalf of the Commissioner have some degree of comparability to the subject property, some being more useful than others. There is certainly a degree of usefulness and corresponding weight to be attached to the evidence emerging from the comparables selected which was helpful to the Tribunal. Without any endeavour made by the appellant to challenge these comparables, without more the Tribunal notes the Commissioner's argument in applying the statutory principles of assessment of Capital Value. The Tribunal's decision is that there is nothing sufficient to displace the statutory presumption of correctness in respect of the Capital Value applied to the subject property. For these reasons, this appeal cannot succeed and the appeal is dismissed by the Tribunal.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 30 December 2020