

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS
AMENDED) AND THE VALUATION TRIBUNAL RULES
(NORTHERN IRELAND) 2007

CASE REFERENCE NUMBER: NIVT 45/15

CHRISTY FABRO & DEREK POOLE APPELLANTS

AND

COMMISSIONER OF VALUATION FOR NI - RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 11 January 2017

Chair: Sarah Ramsey

Members: Tim Hopkins (Valuer) and Robert McCann (Lay)

DECISION AND REASONS

The Facts of the Case

1. This is an appeals relating to a two storey terrace house situate at 17 Holland Park, Dunclug Ballymena BT43 6NS.
2. The reference is made under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (“the 1977 Order”). By a Notice of Appeal dated 9 March 2016 .The appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland (“the Commissioner”) in respect of the decision letter of 25 February 2016 in relation to the valuation of the hereditament situate at 17 Holland Park, Ballymena, BT43 6JS (“the subject property”) as £34,000.
3. Mr Derek Poole represented both Appellants at the hearing.

4. The Property is a two-storey block built terraced house built circa 1970. The parties confirmed the Habitable space to be 107m² with an outbuilding of 8m². The property is 0.7miles from Ballymena Town Centre
5. The property benefits from mains water, mains electricity and mains sewerage.
6. By letter dated 16 July 2015 the property was removed from the Valuation list by the Respondents; this removal was to be effective from 30 July 2014. The crux of the case is that the Respondents asserted this was a temporary removal, the Appellants contended they were not aware that the removal was effectively merely a suspension from the list.
7. The Appellants in their Notice of Appeal indicated that the fact they felt they should have received a letter sent to them from the Respondents informing them that the property would be reinstated on the list and that the original representative from LPS (who had initially agreed to remove the property from the list) should have inspected the property on a second occasion.
8. The Appellants in the Notice of Appeal did not indicate what they believed the actual valuations should be however at hearing the Appellant did not take issue with any of the comparables provided by the Respondents, his contention was that the property should not be returned to the list until he had completed internal works to the property.

The Evidence

9. The following documents were before the tribunal;
 - Appellants' original Notice of Appeal to the Tribunal dated 9 March 2016 in respect of 17 Holland Park Ballymena; Appended documents to the Notice of Appeal, namely letter dated 25 February from LPS with notification of updated valuation; Acknowledgment letter from LPS of 9 February 2016 Letter from Appellant Ms Fabro dated 5 February
 - Photographs taken by the Appellants of the inside of the subject property
 - Respondent's written Presentation of Evidence dated 6 June 2016;

This notice communicates the Tribunal's decision and contains the reasons for the decision in accordance with Rule 19 of the Valuation Tribunal (NI) Rules 2007.

The Hearing

The Respondent endorsed the Respondent's position as set out in the written presentation of evidence. The evidence given was that the Appellants had contacted LPS in July 2014, an inspection took place belatedly on 6 May 2015 after renovation work had already commenced on the property. The Appellants informed the District Valuer that the property had required among other works new windows, a load bearing wall to be moved, the boiler relocated. The District Valuer awarded a temporary removal from the Valuation list as a result of the condition of the subject property. The Respondent gave evidence that this removal was a temporary suspension.

The case was reconsidered on 16 December 2015 when an external inspection took place – due to the District Valuer having been unable to contact the Appellant. This was a different District Valuer than the one attending in May 2015.

The December inspection considered the subject property to be a hereditament and the property was returned to the valuation list. The windows had been replaced, and the property was watertight. The Respondents had taken photographs of the property during a subsequent inspection in February 2016 and these photographs were contained in the respondent's presentation of evidence.

Mr Poole then gave evidence on behalf of both Appellants. His evidence was that he was not told that the removal of the subject property from the list was temporary. He indicated he had had health issues and had not continued with the renovation of the property after it was removed from the list. In his view the Respondents should have contacted him in writing before conducting the external inspection and returning the property to the list.

He accepted he had received a telephone voice message to a number that he stated was normally used for people wishing to rent property from him, from "Natasha from the Rates Office" but that he thought it was a hoax phone call and he had not returned this message.

The appellant gave further evidence to say that even when he had received notification in February 2016 that the subject property had been returned to the list he had not continued with the renovations,

and the condition of the property remained very much as displayed in the photographs' provided.

The Law

10. The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (hereinafter the 2006 Order). 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, as is customary, does not intend in this decision to fully 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, for the reason that these provisions have been fully set out in many decisions of this tribunal, which are readily available. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter.

11. Further relevant legislation for the purposes of this appeal is Article 2(2) of the 1977 Order which defines a 'hereditament' as follows;

"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.

12. Article 25A and Schedule 8A of the 1977 Order provide that rates are payable on unoccupied properties which fall within a class prescribed by Regulations. The Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 ("the 2011 Regulations") came into force on 1 October 2011. These prescribe that, subject to the exceptions set out in the schedule to the Regulations, unoccupied domestic properties are liable to rates.

13. Article 54(3) of the 1977 Order provides that, on appeal, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.

14. The issue before the Tribunal in this appeal is whether the subject property is a hereditament "which is or may become liable to a rate" within the definition of a hereditament set out in Article 2(2) of the 1977 Order or unoccupied properties which fall

within the categories of exceptions set out in the 2011 Regulations.

Is the subject property liable to rates?

15. In relation to the question as to whether a hereditament exists the Tribunal should take account of Mr. Justice Singh's judgment in *Wilson v Coll* and local NIVT decisions of *Fletcher –v- COV 9/12*, *Whitehead Properties –v- COV 12/12* and *Anne O'Hare – v- COV 88\12*. A property which requires a reasonable amount of repairs continues to be a hereditament. The Appellant indicated he was in the process of renovating the property as a business investment.
16. The Respondents asserted that the property constitutes a hereditament and was appropriately returned to the list. The failure of the Respondents to inform the Appellants in writing of the review of any temporary suspension was not a relevant factor for rating purposes. In any event, the Respondent's submitted, attempts were made to contact the Appellant and arrange an internal inspection.

The Tribunal's Findings

17. The removal of the subject property from the valuation list from 30 July 2014 to 16 December 2015 was a temporary suspension. The Tribunal finds it most unfortunate that the letter from the Respondents confirming the suspension did not explain this fact, nor did it indicate for how long the suspension would be effective.
18. However, as the Appellant accepted in giving his evidence, any removal from the list whilst renovations were taking place must have an end date.
19. Whilst the Appellant asserted if he had known the removal of the subject property from the valuation list was temporary he would have completed the renovation in a more timely fashion, his failure to do this once notified of the decision of the Respondents to return the subject property to the valuation list in February 2016 did not support this assertion.
20. In respect of the property's shortcomings as heard in evidence, The Tribunal finds these are issues of reasonable repair and in light of the *Wilson v Coll* case, the subject property does not cease to be a hereditament.

21. The Respondent produced five comparables in support of his assertion regarding the tone of the list which were unchallenged by the Appellant.
22. The Appellants have not claimed that the subject property comes within any of the exceptions set out in the 2011 Regulations and the panel is satisfied that none of the exceptions apply.
23. The Tribunal must take account of the statutory presumption contained in Article 54(3) of the 1977 Order. It states “On an appeal under this article any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown “. It is therefore up to the appellant in any case to challenge and to displace the presumption or perhaps for the Commissioner’s decision on appeal to be seen to be so manifestly incorrect that the tribunal must take steps to rectify the situation.
24. The Appellants have not discharged the burden upon them to show that the valuation assessed for the subject properties is not correct in accordance with paragraph 7 of Schedule 12 of the 1977 Order. The Tribunal is of the view that the subject properties are appropriately on the Valuation List in accordance with tone with evidence the respondent has adduced in its Presentation of Evidence. The appellants chose not to challenge the comparables proposed by the respondent in the presentation of the evidence. In all of the circumstances and in light of the findings above the Tribunal was satisfied that the valuations shown on the Valuation List in relation to the subject properties is correct and that the Tone has been established.
25. The fact a different District Valuer conducted subsequent inspections is not a relevant consideration for the Tribunal in the circumstances of this case.
26. The unanimous decision of the tribunal is that the appeal is dismissed.

Ms. Sarah Ramsey, Chair

Northern Ireland Valuation Tribunal

Date Decision Recorded in Register and issued to Parties: 19 January 2017