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 30/19

MS CATHERINE STEWART– APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: F J Farrelly Esq

Members: Mr Brian Reid FRICS and Ms Noreen Wright

Date of hearing: 29th November 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.
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REASONS

Introduction

1. This is an appeal under Article 54 of the Rates (Northern Ireland) Order 1977 as amended. The statutory provisions are to be found in the 1977 Order as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order").

2. Article 54 of the 1977 Order enables a person who is dissatisfied with the Commissioner's valuation as to capital value to appeal to this tribunal.

3. There is a statutory presumption in Article 54(3) of the 1977 Order that "On an appeal under this Article, any valuation shown in the 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 to displace that presumption.

4. In assessing valuation assumptions are made in article 7(1) of the 1977 Order:

"(a) Subject to the provisions of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in paragraphs 9 to 15, the hereditament 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.
(b) In estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised."

The background to the appeal

5. Ms Stewart, the appellant, took possession of 2 Downshire Road, Bangor in March 2018. A valuation certificate was issued by Land and Property Services. It placed a capital value on the property of £380,000.

6. In 2007 a 5% allowance was made because of the poor external state of the property, reducing its rateable valuation from £450,000 to £425,000. In 2016 it was reduced by a further 10% to its current £380,000.

7. On 5 June 2019 there was an application to remove the property from the valuation list as it was not habitable. Ms Stewart states that when she came into possession of the property in March 2018 it had not been habitable. For a significant period of

time the property was without a roof or windows and did not have heating, plumbing or running water.

8. The district valuer declined to do so and issued a certificate on 3 October 2019 maintaining the valuation. On 2 October 2019 there was an appeal to the Commissioner of Valuation who in turn issued a certificate on 25 October 2019 maintaining the valuation. Ms Stewart then appealed to the Valuation Tribunal, hence the present proceedings.

9. For the appeal we have been provided with a bundle of documents prepared by Ms Graham, a member of the Royal Institution of Chartered Surveyors, on behalf of the Commissioner of Valuation. It is described as' Presentation of Evidence'. The history sets out that on 27 September 2016 the valuation of the property had been reduced to its current £380,000 because of its poor state of repair.

10. The property was inspected by Ms Graham on 18 October 2019. It is described as a detached house built around 1910, approximately half a mile north of Bangor. At the time of inspection the house was undergoing renovation works. The gross external area was estimated to be 352 m². There was an outbuilding which measured 18 m² and a garage measuring 30 m². The respondent accepted that the property was in poor state of repair. There are photographs taken in September 2016 showing the property as well as photographs in October 2019 showing the ongoing building works.

11. When Ms Graham attended the roof was in the process of being replaced, new soffit boards were being installed and a new facia. There was scaffolding around the outside of the property.

12. The respondent has provided a number of comparators at appendix 1 of the bundle. There is a map at appendix 2 showing their location relative to the appellant's home. There is a property at 7 Downshire Road. It is described as being in an average state of repair. It is smaller than the appellants property at 296 m². It has a slightly larger outbuilding and garage at 35 m² and 25 m² respectively. It has been valued at £430,000.

13. Two other properties on Downshire Road have been included. Number 28 is in an average state of repair and was built around the same period. It also is smaller at 305 m² and has been valued at £450,000. Number 9 Downshire Road is smaller again at 227 m² with the garage at 21 m². It has been valued at £380,000.

14. Ms Stewart has provided some history about the property in advance of the appeal hearing. She states it was built in 1905 and was formerly owned by the harbourmaster and is of local historical significance. However, when she bought the property it had fallen into disrepair. After buying the property she requested a review of the valuation on a temporary basis pending work being completed. The respondent maintained the valuation.

15. She contends that the assumption that the property is in in an average state of repair is not fair and reasonable when its actual condition is taken into account. She also contends that the facts in the case of McCombe -v- Commissioner of Valuation are different in that that property did not appear to require significant repair unlike the appellants. Similarly, the decision cited of Trodden -v- Commissioner of Valuation was dealing with a different factual situation with the

property being in reasonable condition which she states was not the position with hers.

16. She indicates her property required extensive works. This included replacing of the roof trusses, re-felting and slating and steel supports for the roof and various rooms. The property had to be completely rewired, re-plumbed and re-rendered. Major internal works were required, including treatment for dry rot, a subfloor removal and a new damp proof course as well as replacement joists. On a purely economic basis she submitted that it would have been cheaper to demolish and rebuild but she was conscious of the significance of the building.

17. Whilst acknowledging the decision of Wilson v Coll did relate to a building in very poor state of repair she refers us to the comment in Whitehead -v- Commissioner of Valuation. That the specific circumstance in each individual case has to be taken into account. She also refers to the decision of Mackin -v- Commissioner of Valuation where the property was described as being in effect a shell.

18. Ms Stewart has provided photographs showing the work to her property as it progressed, and they give an indication of the scale of the works involved. She has also provided an example of the costings. The building work was apparently carried out under the standard form contract procedure with stage certified payments.

19. The respondent did provide a written response dated 10 May 2021. They rely upon the decision of Wilson v Coll and contend that the property could not be classed as truly derelict. They also submit that the test in relation to the required repair work is not an economic test but rather is a consideration of whether it is practical to return the dwelling to a state where it can be occupied. The respondent suggests

the facts in Mackin -v- Commissioner of Valuation are not comparable as it concerned a property vacant for 17 years with inherent and substantial weaknesses in the roof and exterior structure. In comparison, it was contended that the appellant's property was largely intact, and an allowance had already been made to reflect its poor external repair.

The appeal hearing.

20. The tribunal members were physically present at the Royal Courts of Justice. Ms Stewart also attended. The respondent by way of a presenting officer, Mr Steven Jeffrey and Ms Graham, took part over video link.

21. The appellant told us that the property had been on the market for three years and was slow to sell because of its condition.

22. Ms Graham acknowledged that there were problems with the house but relied on the decision of Wilson v Coll. Ms Stewart advised us that she had been not aware the property was still on the valuation list. There is reference to the respondent's letters being sent to the wrong address. She said the comparators used were secure from the wind and waterproof. She referred us to Mackin -v- Commissioner of Valuation. She told us that three of the chimney breasts in the property had to be fixed. She said the property essentially was a shell when she bought it. Therefore, it should have been excluded from the time she purchased it. She said the family eventually were able to move in on 3 August 2020.

Our conclusions

23. The appellant's home is a very attractive detached property just outside of Bangor, Co.Down. It is in a sought-after location. It is of substantial size with a garden front and rear space. It has the benefit of outbuildings. The property has many interesting features and is of local historical interest.

24. It is beyond doubt that when the appellant bought the property it was in need of major repairs. The state of the property was such that it was on the market for a very long time because of the work involved. The purchase price of the property was discounted to reflect its condition.

25. A clear indication of the scale of repairs needed is the cost of the building works as can be seen in the staged payment. To name a few, the house had dry rot. There were significant problems with the roof, guttering and chimney breasts. The plaster had to be stripped and re-rendered. Floors made good and the damp proof course installed. Thereafter there were the internal works which also were substantial including rewiring and re-plumbing.

26. The appellant has provided photographs of the works as they went on and they give some indication of the scale of works involved. It was several years before the appellant and her family were able to move in.

27. The appellant's contention is that the property should have been taken out of the valuation list as it was uninhabitable pending completion of the works. In the past, the respondent would have done this. In practice this was done on a discretionary basis, typically with a site visit by member of staff from the respondent,

consideration of the building works and the time estimate given. The respondent would then fix a completion date from when rates would become payable. However, the respondent's approach has changed. We cannot speak for the respondent, but the change appears to be linked with the decision in Wilson –v- Coll [2011] EWHC 2824. This decision is cited by the respondent in almost every appeal raising issues like the present.

28. 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.

29. `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.

30. 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.

31. 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.

32. The legislation and case law generally are not sympathetic to someone in the appellant's position. A summary of much of the case law is contained in the Valuation Tribunal decision of McCombe, which in turn includes a reference to the Valuation Tribunal decision of Whitehead. The latter refers to the absence of an economic test. There is reference to a spectrum of properties, with at one end properties which require very little repair work to render them habitable and at the other end derelict properties. The case law would suggest even if a property were derelict that is not necessarily the end of the matter. There is reference to properties requiring an unreasonable amount of repair work. However, bearing in mind economics are not the issue the concept of reasonableness then becomes unclear in that context. It may be that a practical consideration is what is called for, along with the addition of common sense, in asking the question is the property repairable.

33. Paragraph 26 of the Whitehead decision states a reasonable person would not wish to expend a very substantial amount of money upon the repair of a nearly worthless property. This statement is however contrary to the notion of suspending economic realities. In the present instance the appellant's property when it was

bought was not a worthless property but one which required substantial repair. In the circumstance it may have been economic to do so. This however is not the test. The answer is in a circuitous question- whether the property is a hereditament

34. The Valuation Tribunal decision of Baiyelo was heard on 18 August 2017.This is a decision of the Valuation Tribunal for England and is not binding upon us. 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.

35. 20. Our conclusion is that in light of the reasoning advanced in Wilson –v- Coll and the other cases the respondent's decision is correct. We appreciate that the appellant feels aggrieved at the apparent unfairness of having to pay substantial rates upon property which required such substantial work, and which was uninhabitable for a long time.

36. The appellant has focused upon having her property removed from the valuation list rather than challenging the valuation placed upon it. We find the valuation is reasonable bearing in mind the comparators. We find the properties used are similar and can be used. As a slight consolation is notable that the appellant's valuation has been successively reduced to reflect its condition.

Chairman: F J Farrelly Esq

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 17 May 2022