LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

RATES (NORTHERN IRELAND) ORDER 1977

IN THE MATTER OF AN APPEAL

VT/1/2018

BETWEEN

WILLIAM YOUNG – APPELLANT

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: 39A Carrowdore Road, Greyabbey

Lands Tribunal – Henry M Spence MRICS Dip Rating IRRV (Hons)

Background

1. Mr William Young ("the appellant") and his wife, Roberta Young, built the property at 39A Carrowdore Road, Greyabbey ("the reference property") in and around 2004 and have been in occupation there ever since.

2. The reference property has a gross external area of 333 square metres and a garage extending to some 47 square metres. It has double glazed windows, full central heating and is connected to all mains services.

3. Whilst the appellant had planning permission to build a house on the site, the planning authorities considered that the house, as built, did not comply with the planning permission. The reference property was therefore "unauthorised development" within the context of The

Planning (Northern Ireland) Order 1991 ("the Planning Order"), which was the operative legislation at the time of the build.

4. Subsequently, on 9th January 2004, the Department of the Environment (Planning Service) issued an Enforcement Notice under the Planning Order. This Enforcement Notice required the appellant and his wife to:

> "(i) Remove the unauthorised building and all building materials and rubble arising thereof from the land within 120 days from the date on which the Notice took effect, namely 12th February 2004;
>
> (ii) Reinstate the land to its original condition within 130 days from the date the Notice took effect."

In summary the Enforcement Notice required and still requires the demolition of the reference property and the restoration of the site to its previous condition. The appellant and his wife had the right to appeal the Enforcement Notice but did not do so.

5. The appellant and his wife have been convicted on several occasions for their failure to comply with the Enforcement Notice. There therefore remains against them, or any subsequent owner of the reference property, a statutory obligation to demolish the house and restore the site.

6. Meanwhile, on 31st January 2005, the District Valuer had entered the reference property in to the Valuation List with a capital value rates assessment of £370,000. The appellant paid the rates liability in full up until June 2017.

7. On 3rd January 2014 the appellant had submitted an application to the District Valuer for revision of the Valuation List rates assessment on the grounds that Planning Service had served a Notice requiring the reference property to be demolished. On 12th June 2015 the

District Valuer issued a certificate declining to alter the capital value on the grounds that the property was occupied and was therefore liable for rates.

8. On 18th June 2015 the appellant lodged an appeal against the District Valuer's decision to the Commissioner of Valuation ("the respondent") on the grounds that the: "property was the subject on an Enforcement Notice by DOE NI Planning in 2004. There can be no capital value applied to a property which is illegal and under condemnation of demolition".

9. The respondent declined to alter the capital value and a certificate to that effect was issued to the appellant on 20th July 2015.

10. On 26th August 2015 the appellant issued an appeal against the respondent's decision to the Northern Ireland Valuation Tribunal ("NIVT") on the grounds that "there cannot be a capital value on a property which has been illegally constructed and subject to an Enforcement Notice to demolish".

11. On 26th July 2016 the respondent lodged his "Presentation of Evidence" with the NIVT which made the following points:

    (i) The effect of the statutory assumptions contained in the Rates (Northern Ireland) Order 1977 ("the Rates Order") was such that the respondent could not take into account the lack of planning permission for the reference property.

    (ii) The NIVT had already dealt with this point in the case of Adam Cochrane v Commissioner of Valuation 30/14. In that case the appellant contended that his property should have no capital value on the basis that it did not have planning permission. The NIVT held that "it was bound by Schedule 12 paragraph 15 of the Rates Order and to assume that there had been no relevant contravention of any statutory provision, requirement or obligation which would effect the capital value of the hereditament. Therefore the Tribunal must assume the property has the necessary permission and the property has a value".

12. On the basis that the absence of planning permission should be ignored the respondent then compared the reference property to other similar properties in the area and concluded that, as of 1st January 2005 ("the valuation date"), a fair assessment of the capital value was £370,000.

13. The appellant's appeal to the NIVT was heard on 11th January 2017 and on 16th February 2017 the NIVT issued its decision unanimously dismissing the appeal.

14. The appellant's case was summarised at paragraph 20 of the decision:

> "20. The Appellant went on to say that notwithstanding the comparables and the proposed Capital Value the subject property was not worth anything at present. He contended the Respondents had incorrectly interpreted the 2006 Order. His case was that the Statutory Presumption was only intended to be applied in the absence of information, and upon the provision of further information, the presumption should not apply."

15. The NIVT decision was summarised in the following paragraphs:

> "29. The evidence presented by both parties was that the subject property was effectively a family home with all the standard amenities and services in which the Appellant had resided for nine years. It was the unanimous view of the Tribunal that in this context the subject property was a hereditament.
>
> 30. 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'.*
>
> 31. It is therefore up to the Appellant in any case to challenge and 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.

32. The Tribunal then considered the issue as to whether the Appellant had, through the proofs and arguments advanced, displaced the presumption of the correctness of the Capital Value.
33. In the case of Cochrane v Commissioner of Valuation 30/14 no evidence had been forwarded to challenge the presumption.
34. In the instant case the Tribunal considered the effect of the Enforcement Notice on the Statutory Presumption under Schedule 12 of the Order.
35. This issue has been considered in the case of Walsh v Commissioner of Valuation 6167187-3. In that case the presence or absence of planning permission for Housing of Multiple Occupation was found to have no effect on the capital value.
36. The presence or absence of planning permission had not prevented the Appellant from having used the subject property as a family home notwithstanding the existence of the Enforcement Notice since 2004.
37. It is the Tribunal's view that the appellant has not discharged the burden upon him to show that the valuation assessed for the subject properties is not correct in accordance with paragraph 15 of Schedule 12 of the 1977 Order. The Tribunal is of the view that the subject properties are appropriately in the Valuation List in accordance with tone with evidence the respondent has adduced in its Presentation of Evidence."

16. On 1st March 2017 the appellant sought leave to appeal the decision of the NIVT. The NIVT reviewed its own decision, pursuant to Rule 21 of the Valuation Tribunal Rules (Northern Ireland) 2007. In a short judgement, dated 22nd November 2017, the NIVT concluded there was no basis to depart from its previous decision.

17. On foot of the original request, dated 1st March 2019, the appellant sought from the President of NIVT, leave to appeal the NIVT's original decision. By a decision dated 28th November 2017 the President agreed with the original NIVT decision on the merits and refused to grant leave to appeal.

18. The appellant was therefore entitled to seek leave directly from the Lands Tribunal, under Article 54A of the Rates Order and a notice of application for leave to appeal was filed with the Registrar of the Lands Tribunal on 21st December 2017. On 11th April 2018 the Lands Tribunal granted the appellant leave to appeal.

The Issue to be Decided by the Tribunal

19. The appellant's grounds of appeal were that the NIVT erred in its consideration of the implications of a Planning Enforcement Notice levied on the reference property which, in effect, required its demolition and erred in failing to accept the appellant's submission that the reference property should have nil valuation for rates purposes.

20. The respondent considered the key question for the Tribunal to be, were the assumptions contained in Schedule 12 paragraphs 9 to 15 of the Rates Order mandatory and to be applied in all circumstances or could they be ignored in light of reality.

Procedural Matters

21. The appellant was represented by Mr Dessie Hutton BL instructed by Madden & Finucane, Solicitors. Ms Maria Mulholland BL, instructed by the Departmental Solicitor's Office, represented the respondent. The Tribunal is grateful to counsel for their detailed and helpful submissions.

The Statute

22. The relevant statutory provisions are set out in the Rates Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Amendment Order"). Article 8 of the 2006 Amendment Order amended Article 39 and Schedule 12 of the Rates Order.

> "8.-(1) In Article 39 of the principal Order (basis of valuation), for paragraph (1) there shall be substituted the following paragraphs-

‘(1) For the purposes of this Order every hereditament shall, except as provided by paragraphs (1A) to (1C), be valued upon an estimate of its net annual value.

(1A) For the purposes of the Order the following hereditaments shall be valued upon an estimate of their capital value –

(a) any dwelling-house;

(b) any private garage;

(c) any private storage premises.

(1B) ...

(1C) ...’

(2) In Part I of Schedule 12 to principal Order (basis of valuation), after paragraph 6 there shall be inserted the following paragraphs –

‘*Capital value – general rule*

7.-(1) Subject to the provisions of this Schedule, for the purposes 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.

(2) 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.

(3) The assumptions mentioned in paragraphs 9 to 15 shall apply for the purposes of determining whether one hereditament is a comparable hereditament in the same state and circumstances as another with the omission of sub-paragraphs (2) and (3) of paragraph 12.

(4) In sub-paragraph (1) ‘relevant capital valuation date’ means 1st January 2005 or such date as the Department may substitute by order made subject to negative resolution for the purposes of a new capital value list.

Capital Value – the assumptions

8. In this paragraph and paragraphs 9 to 15-

'development' has the meaning given by Article 2(2) of the Planning Order;

'flat', in relation to a building, means a dwelling which is a separate set of premises, whether or not on the same floor, divided, horizontally from some other part of the building;

'incumbrance' means any incumbrance, whether capable of being removed by the seller or not, except service charges;

'permitted development' means development for which planning permission is not required or for which no application for planning permission is required;

'Planning Order' means the Planning (Northern Ireland) Order 1991 (NI 11);

'planning permission' has the meaning given by Article 2(2) of the Planning Order;

'rentcharge' has the meaning given by section 27(1) of the Ground Rents Act (Northern Ireland) 2001 (c. 5).

9. The sale is with vacant possession.

10. The estate sold is the fee simple absolute or, in the case of a flat, a lease for 99 years at a nominal rent.

11. The hereditament is sold free from any rentcharge or other incumbrance.

12.-(1) The hereditament is an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality.

(2) The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

(3) In sub-paragraph (2) 'relevant date' means 1st April 2007 or such date as the Department may substitute by order made subject to negative resolution for the purposes of a new capital value list.

13. The hereditament has no development value other than value attributable to permitted development.

14.-(1) A hereditament falling (or deemed to fall) within any sub-paragraph of Article 39(1A) will always fall within that sub-paragraph.

(2) A hereditament falling (or deemed to fall) within paragraph (1B) of Article 39 will always fall within that paragraph.

15.-(1) There has been no relevant contravention of –

(a) any statutory provision; or

(b) any requirement or obligation, whether arising under a statutory provision, an agreement or otherwise.

(2) In sub-paragraph (1) 'relevant contravention' means a contravention which would affect the capital value of the hereditament'." [Tribunal emphasis]

23. Relevant definitions in the Rates Order are listed in Article 2:

"2.-(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order –

'building' includes a structure, whatever the method by which it has been erected;

'capital value' shall be construed in accordance with Article 39;

'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;

'rateable capital value' and 'rateable net annual value' shall be construed in accordance with paragraph 1 of Schedule 7;

'rateable value' shall be construed in accordance with Article 17;

'statutory provision' has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;"

24. Article 4 which is headed "Interpretation: definition of 'dwelling-house', etc." provides:

"Article 5 shall have effect for the purpose of determining whether a hereditament is to be treated as a dwelling-house for the purposes of this Order, and for the purpose of determining to what extent certain hereditaments are to be treated as used for the purposes of a private dwelling and the definitions of 'private garage' and 'private storage premises' contained in paragraphs 6 and 7 of Schedule 5 shall have effect for the purposes of this Order."

25. Paragraph 1 of Schedule 5 states:

"1. In this Order –

'dwelling-house' means, subject to paragraphs 2 to 5, a hereditament used wholly for the purposes of a private dwelling;"

26. Schedule 6 of the Rates Order provides:

"1. In this Order-

'material change of circumstances' means a change of circumstances which consists of-

(a) the coming into occupation of a newly erected or newly constructed hereditament or of a hereditament which has been out of occupation on account of structural alterations; or

(b) a change in the value of a hereditament caused by the making of structural alterations or by the total or partial destruction of any building or other erection by fire or any other physical cause; or

(c) the happening of any event whereby-

(i) any property or part of any property begins, or ceases, not to be treated as a hereditament; or

(ii) any hereditament or part of any hereditament begins or ceases to be entitled to be distinguished in the valuation list in pursuance of Article 41, 42 or 43 ...".

27. Article 17 states:

"17.-(1) For the purposes of this Order the rateable values of a hereditament are –

(a) its rateable net annual value (if any); and

(b) its rateable capital value (if any).

(2) For the purposes of this Order the rateable values of a hereditament shall be ascertained in accordance with the provisions of Schedule 7."

28. Schedule 7 contains the introductory paragraph:

"1. Except as provided to the contrary in this Schedule-

(a) ...

(b) the rateable capital value of any hereditament shall be its capital value (if any)."

29. Article 54 deals with appeals from the decision of the respondent and Article 54(3) states:

"On 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."

30. Both counsel summarised their understanding of the relevant statutory provisions:

(a) Mr Hutton BL:

(i) Various concepts were at the core of the wording of the Order, to include the concepts of 'property' and 'hereditament'.

(ii) A 'property' may not be 'hereditament' – see the definition of 'hereditament' in Article 2; see also Schedule 6, para 1(c)(i)

(iii) In order to be rated at all a property must be a hereditament.

(iv) If it was a hereditament then the next question was as to its classification as a dwelling house in accordance with Article 4 and Schedule 5 – if the property was a hereditament which was used wholly for the purposes of a private dwelling then it was a dwelling house.

(v) If it was a dwelling house then in accordance with Article 39(1A) it should be valued on the basis of an estimate of its capital value in accordance with Schedule 12.

(vi) The next statutory question on that basis was "what was the capital value in accordance with Schedule 12?" – that is, what was the amount the hereditament might reasonably be expected to realise if sold on the open market by a willing seller on the relevant valuation date.

(vii) That involved the application of the assumptions in that the sale was assumed to take place on the basis of these assumptions.

(b) Ms Mulholland BL summarised:

(i) A hereditament which was a dwelling house was valued for the purposes of rates by way of an estimate of its capital value.

(ii) A dwelling house was a hereditament used wholly for the purposes of a private dwelling.

(iii) Capital value is defined as 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.

(iv) The relevant capital valuation date was 1st January 2005.

(v) The relevant assumption at paragraph 15 was that there had been no relevant contravention of any statutory provision or any requirement or obligation, whether arising under a statutory provision, an agreement or otherwise and a relevant contravention meant one that would affect the value of the hereditament.

(vi) On appeals from the respondent's decisions there was a presumption that a valuation shown in the valuation list was correct until the contrary was shown, therefore the burden was on the appellant to show that the valuation list was incorrect.

The Tribunal's Summary

31. The relevant statutory requirements were therefore:

(i) All properties were not hereditaments but in order to be rated a property must be a hereditament [Article 2(2)].

(ii) If the hereditament was a dwelling house, as defined in Article 4 and Schedule 5, its rateable valuation was based on an estimate of its capital value, in accordance with Article 39(1A) and Schedule 12.

(iii) The onus was on the appellant to prove that the Valuation List entry was incorrect [Article 54(3)].

Authorities

32. The Tribunal was referred to the following authorities from the Northern Ireland jurisdiction:

- Walsh v Commissioner of Valuation 6167187-3
- Stirling v Commissioner of Valuation NIVT 25/10
- Alan Fletcher v Commissioner of Valuation NIVT 9/12
- Adam Cochrane v Commissioner of Valuation NIVT 30/14

- Galbraith v Commissioner of Valuation NIVT 42/15
- Department of Finance v Mary Quinn NIVT 12/16
- Department of Finance v Mary Quinn [2019] NICA 41

33. And to the following authorities from the jurisdiction in GB:

- River Wear Commissioners v Adamson [1877] 2 App Cas 743
- Dawkins v Ash Brothers Limited [1969] 2AC 366
- Post Office v Nottingham Council [1976] WLR 624
- Hoare v National Trust [1999] 1EGLR 155
- R (on the application of Westminster City Council) v National Asylum Support Service [2002] UKHL 38
- Assessor for Grampian Valuation Board v Brownlee [2003] SC 245
- Attorney Generals Reference No5 of 2002 (On appeal from the Court of Appeal) (Criminal Division) [2004] UKHL 40
- Melville Dundas Limited v George Wimpey UK Limited [2007] UKHL 18
- R v Abu Hamza [2007] 3 All ER 451 (para 34)
- Wilson v Josephine Coll [2011] EWHC 2824
- Bogdanic v Secretary of State for the Home Department [2014] All ER (D) 25 (Sep) (paragraph 3)
- Re Agricultural Sector (Wales) Bill [2014] 4 All ER 789 [paras 38-39]
- Coll v Walters [2016] EWHC 831 Admin

Additional Statutes

34. The Tribunal was also referred to the following additional statutes:

- Rating and Valuation Act [1925] Section 22(1)(b)
- Planning (Northern Ireland) Order [1991] Articles 68-76
- Council Tax (Valuation of Dwellings) (Scotland) Regulations [1992]; Reg 2(2)
- Regulations 6 of the Council Tax (Situation and Valuation of Dwellings) Regulations [1992]
- Planning Act (Northern Ireland) 2011 S 196

Texts

35. Counsel considered the following texts to be relevant:

- Bennion on Statutory Interpretation, Seventh Edition pages 585-592 and 605-608
- Bennion of Statutory Interpretation, Section 24.9 Reports leading up to Bill and Draft Bills
- Rates (Capital Values etc.) (Northern Ireland) Order 2006, Explanatory Memorandum
- Proposal for Draft Order in Council – The Rates (Capital Values etc.) (Northern Ireland) Order 2005 – Public Consultation document, 7th October 2007

Position of the Parties

36. Mr Hutton BL's position was that in reaching their decision the NIVT erred in the following ways:

(i) The decision appealed from failed to recognise the difference between the absence of planning permission simpliciter in respect of a property being valued for rating purposes and the materially distinct position where the same property was subject to

active planning enforcement and was subject to a planning enforcement order which was tantamount to a "demolition order".

(ii) As a result the NIVT erred in finding that the property was a hereditament and thus a dwelling house.

(iii) Alternatively they failed when valuing the hereditament/dwelling house to recognise that this was not a case of absence of planning permission simpliciter.

(iv) As a result they failed when valuing the reference property to recognise the true incidence on valuation of the "demolition order".

(v) The NIVT moreover acted inconsistently when applying Schedule 12, paragraph 15 in assuming that the property complied with the "statutory requirement" to have planning permission in the first place but then failing to make a similar assumption that there had been compliance with the "requirement or obligation" imposed by the demolition order itself.

(vi) The NIVT failed to consider properly the question of whether in considering the correctness of the valuation, the assumptions were rebutted by the evidence proffered showing the existence of and nature of the "demolition order".

(vii) The NIVT as a result of all of the above failed to value the property on any true "open market" basis in accordance with the "reality" principle in circumstances where they were not obliged to ignore the incidence of the "demolition order" in the general valuation exercise and rather were obliged to give full recognition to the impact upon open market valuation that the "demolition order" undoubtedly would have in the "real world".

37. In summary Mr Hutton BL submitted that the determination of the NIVT was not in accordance with the reality of the situation and was not otherwise in accordance with the law and should not be allowed to stand. He further submitted that the appellant's case that the property had a nil capital value and a nil rate should be accepted and the NIVT's decision to the opposite effect should be overturned.

38. Ms Mulholland BL's position was that the assumption contained in Schedule 12 paragraph 15 of the Rates Order, like the rest of the assumptions in Schedule 12, was mandatory and was to be applied in all circumstances, even if the reality was different. She submitted, therefore, that the appellant had failed to rebut the presumption that the valuation in the Valuation List was correct and accordingly the Tribunal should dismiss the appeal.

39. Having considered the submitted evidence the Tribunal finds the following issues to be relevant to the outcome of the subject reference:

(i) Was there a hereditament?

(ii) If so, was the appellant in rateable occupation of the hereditament?

(iii) Was the appellant's application to the Tribunal contrary to the public policy that no court would lend its aid to a person who founded his cause of action on an illegal act?

(iv) The effect of the Enforcement Notice.

(v) The relevant authorities.

(vi) The interpretation of the para 15 assumption.

Was there a Hereditament?

40. In order for a property to be liable for rates it must first be a hereditament, as defined in Article 2(2) of the Rates Order. Not all properties were hereditaments.

41. In the subject reference the appellant disputed that the reference property comprised a hereditament in the first place. Mr Hutton BL referred the Tribunal to the case of Wilson v Coll [2011] EWHC 2824 (Admin). In that case Singh J concluded that a property could be in such a state of disrepair as to not qualify as a hereditament at all.

42. He submitted that a similar argument could be made as regards the incidence of a planning enforcement notice that required the property to be demolished and such a notice went to the essence of whether there was a hereditament at all.

43. Mr Hutton BL referred the Tribunal to the definition of hereditament in Schedule 2(2) and Schedule 6 paragraph 1(c)(ii). He considered the subject property to be akin to that discussed in Schedule 6(1)(b) where there had been a total destruction of the building so that no rate could ever be applied. In conclusion, he submitted that NIVT erred in concluding the reference property was a hereditament at all.

44. Ms Mulholland BL submitted that a hereditament was a property which was or may become liable to a rate (as defined in Article 2(2)), and this was basically a property which was capable of occupation. She referred the Tribunal to the English Court of Appeal decision in Post Office v Nottingham Council [1976] 1 WLR 624 at 635B and the case of Wilson v Coll [2011] EWHC 2824 at 40. The Tribunal agrees with Ms Mulholland BL, both these cases confirmed that a hereditament was a property which was capable of occupation and as such the Tribunal is satisfied that the reference property is a hereditament.

Was the Appellant in Rateable Occupation of the Hereditament

45. The appellant had paid rates on the reference property from 2004 up until June 2017. Was the appellant therefore in rateable occupation of the reference property? This was the second issue to be decided by the Tribunal. In John Laing and Son Ltd v Kingswood Assessment Committee [1949] 1KB 344 the Court listed four ingredients which were recognised as essential tests to confirm the existence of rateable occupation. These tests were well established in subsequent rating case law:

(i) there must be actual occupation;

(ii) the occupation must be exclusive;

(iii) the occupation must be of some value or benefit; and

(iv) the possession must not be too transient.

46. Applying the tests to the subject reference Ms Mulholland BL submitted that the appellant

(i) was in actual occupation of the reference property;

(ii) he had exclusive occupation;

(iii) the occupation was of benefit to the appellant; and

(iv) the occupation was not too transient as he had been in occupation from 2004 to the present time.

47. The Tribunal agrees with Ms Mulholland BL and is therefore satisfied that the reference property was a hereditament as defined in the Rates Order and the appellant was in beneficial occupation of that hereditament.

48. It was not disputed that if a hereditament existed the reference property was a dwelling house as defined in the Order and in accordance with Article 29(1A) it should be valued for rates purposes on the basis of an estimate of its Capital Value in accordance with Schedule 12.

49. That Capital Value was to be based on a set of assumptions listed in Schedule 12 of the Order sub-paragraphs 9 to 15. The primary dispute between the parties was the interpretation of the assumption listed at paragraph 15.

Public Policy

50. Ms Mulholland BL asked the Tribunal to note that rates were a tax on beneficial occupation of a property and the reference property was and would be capable of beneficial occupation unless and until it was demolished. She also asked the Tribunal to note that rates fund public

services and as the appellant and his wife continued to occupy the property, they benefited from the public services funded by the rates chargeable on the reference property.

51. As the appellant had acted with impunity in failing to comply with the Enforcement Notice and had been prosecuted for same several times, she submitted that the outcome the appellant sought in the subject reference was to benefit from his “illegal” activity by avoiding rates liability.

52. This, she submitted, was contrary to the public policy that no court would lend its aid to a person who founded his cause of action upon an illegal or immoral act and the maxim "ex turpi causa non oritur actio” and “ex dolo malo non oritur actio” applied.

53. Mr Hutton BL submitted that the appellant was merely seeking to have the reference property valued in accordance with the terms of the statute. He respectfully submitted that it was not for the Tribunal to “moralise”. The Tribunal agrees with Mr Hutton BL, the Tribunal’s role was to ensure that the reference property had been given the correct rates assessment, in accordance with the provisions of the Rates Order.

The Planning Enforcement Notice

54. The Planning Enforcement Notice of 2004 had been issued under Article 68 of the Planning Order. Mr Hutton BL submitted that there was a material difference between a property which lacked planning permission simpliciter, and which was either immune or at risk and a property, such as the reference property, where the further step had been take to enforce and where the property was in effect “condemned”.

55. The planning enforcement notice in respect of the reference property, which was issued within the relevant time limit for enforcement stated:

"1. This is a final notice which is issued by the Department because it appears there has been a breach of planning control, under Article 67(A)(1)(c) of the above Order, at the land described below. It considers it is expedient to issue this Notice, having regard to the provisions of the development plan and to other material planning considerations.

2. The Land Affected – Land to the West of 39 Carrowdore Road, Greyabbey shown edged in red on the attached map.

3. The Matters Which Appear to Constitute the Breach of Planning Control – the unauthorised construction of a dwelling in the approximate position indicated hatched blue on the map attached being development carried out without the grant of planning permission required in accordance with Part IV of the Planning (NI) Order 1991.

4. What You Are Required To Do:

   (i) Remove the unauthorised building and all building materials and rubble arising thereof from the said land within 120 days from the date on which this Notice takes effect; and

   (ii) Reinstate the land to its original form by levelling and topsoiling within 130 days from the date on which this notice takes effect followed by reseeding in the first growing season following compliance with the above request.

5. When This Notice Takes Effect – This notice takes effect on 12th February 2004, unless an appeal is made against it beforehand your attention is drawn to the right conferred on you by Article 69 of the above, the Planning (Northern Ireland) Order 1991, in relation to an appeal against an Enforcement Notice."

56. There was no appeal against the Notice and the Notice was therefore operative and had been operative since 2004. The Planning Order permitted the Planning Authorities to enter the reference property and conduct the demolition themselves. It was not disputed that the Enforcement Notice placed a statutory obligation on the appellant to remove the dwelling and had he done so there would be no dwelling to be rated.

57. Mr Hutton BL submitted therefore that the reference property was "condemned"; no reasonable purchaser would ever contemplate purchasing the property and no bank would ever fund such a purchase. In "real world" terms he considered the reference property to be effectively worthless and the question on the subject appeal was whether the Rates Order required these facts to be ignored in the context of assessing a rateable value on the reference property. The Tribunal agrees that in "real world" terms the reference property was effectively worthless.

The Relevant Authorities

58. The main issue between the parties with regard to the assessment of rateable value was the application and interpretation of the assumption at paragraph 15 of Schedule 12. For convenience the Tribunal refers to it as the para 15 assumption.

59. When assessing the capital value the valuer must assume that "there has been no relevant contravention of any statutory provision". Mr Hutton BL asked the Tribunal to note that the appellant was currently in breach of two statutory provisions (i) the requirement for planning permission and (ii) the Enforcement Notice which required the building to be knocked down. If the appellant complied with breach (ii), Mr Hutton BL submitted that the building would be demolished and there would be no rates payable. He considered therefore that there were three possible approaches:

    (i) The legislation stated "any" which meant all and the para 15 assumption should apply in full to each breach.

    (ii) The two assumptions were incompatible and the principal of "reality" should kick in.

    (iii) The set of facts in the subject reference was never intended to be covered by the Rates Order para 15 assumption.

60. With regard to the principal of "reality" Mr Hutton BL referred the Tribunal to the case of Hoare v National Trust [1999] 1 EGLR 155 at 160:

"The statutory hypothesis is only a mechanism for enabling one to arrive at a value for a particular hereditament for rating purposes. It does not entitle the valuer to depart from the real world further than the hypothesis compels."

61. Ms Mulholland BL asked the Tribunal to note that Hoare v National Trust concerned the rating of properties under Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 which provided that:

"The rateable value of a non-domestic hereditament ... shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year if the tenant undertook to pay all usual tenants' rates and taxes and to bear the cost of repairs and the other expenses ... necessary to maintain the hereditament in a state to command that rent".

This was the hypothetical tenancy.

62. She submitted that the principles in respect of this hypothetical tenancy were of little assistance to the principles applicable to the basis of capital value under the Rates Order, which was constructed with the objective of moving away from rental valuation for domestic property.

63. Moreover, the paragraph of the decision relied upon by the appellant stated: "It does not entitle the valuer to depart from the real world **further than the hypothesis compels"** [Ms Mulholland BL emphasis] and she contended this actually supported the respondent's case that one must look to the wording of the statute and the intention behind the words, which was clearly to depart from reality in the case of the para 15 assumption, a prime example of which was a breach of planning permission.

64. The Tribunal notes the submissions from the respective counsel but finds this case of little assistance in the subject reference. The Tribunal agrees, however, with Ms Mulholland BL's contention that the valuer must depart from the "real world" when the statute compelled.

65. Mr Hutton BL asked the Tribunal to note that "real world" considerations to be taken into account in the valuation/rating context had been held to include planning conditions/restrictions and demolition orders. He referred the Tribunal to Assessor for Grampian Valuation Board v Brownlee [2003] SC 245 in which the Scottish Court of Session considered the valuation of a farmhouse to which was attached a planning condition restricting occupation to that of a farm worker. It was argued that the property should be valued without regard to this planning restriction, which was rejected by the Court:

> "10. We are not persuaded that the submission for the Assessor is well-founded. **There is nothing in regulation 2(2) which states, or implies, that a planning restriction which affects the value of a dwelling falls to be ignored** [Mr Hutton BL emphasis]. We note that subparagraph (h) requires the assessor to ignore development value other than value attributable to permitted development. 'Permitted Development' is defined by Regulation 1(2) as being development for which planning permission, or an application for planning permission, is not required. Thus subparagraph (h) entails that the Assessor does not have to be concerned with the possible enhancement of the value of a dwelling by reason for the existence or prospect of planning permission for development other than 'permitted development'. However, **the Assessor is not required to ignore any depreciation in value which is due to a planning restriction** [Mr Hutton BL emphasis]. The assumption under subparagraph (g) that the use of the dwelling would be permanently restricted to use as a private dwelling is evidently intended to exclude its potential value for some other use or uses. That assumption has no bearing on the present issue."

66. Mr Hutton BL asked the Tribunal to note that the core of the Assessor's argument was that the assumption of sale on the open market by a willing seller excluded any effect which the planning restriction might have on the value of the dwelling. He considered it of some significance to bear in mind that planning permission ran with the land [Section 44 of the

Town and Country Planning (Scotland) Act 1977]. While the number of persons who would be interested in making an offer for the dwelling would, by reason of the planning condition, be limited, he submitted that it did not follow that it was impossible to assume the dwelling being sold on the open market by a willing seller for the best price which could be obtained in the circumstances. On that basis he considered that in the Grampian case the contention that the planning condition fell to be ignored involved a departure from reality which was required neither by the assumption of sale on the open market or by any of the specific assumptions set out in subparagraph (2).

67. Ms Mulholland BL considered that this case could be distinguished from the subject reference as it concerned the assumptions contained in the Council Tax (Valuation of Dwellings) (Scotland) Regulations 1992, Reg 2(2), and in particular whether a planning restriction fell to be ignored. She asked the Tribunal to note that the Court held there was nothing in Reg 2(2) that stated or implied that a planning restriction affecting the value of a dwelling fell to be ignored and the contention that the planning condition fell to be ignored involved a departure from reality which was required neither by the assumption of sale on the open market nor by any of the specific assumptions in Reg 2(2). She contrasted this with the para 15 assumption in the 1977 Rates Order which specifically required a departure from reality in the case of a breach of planning permission.

68. The Tribunal agrees with Ms Mulholland BL. In the subject reference there was a statutory duty on the valuer to ignore any statutory breach, including a breach of planning permission. This was a completely different statutory requirement to that in the Grampian case and for that reason the Tribunal derives little assistance from this authority.

69. The Tribunal was then referred by Mr Hutton BL to the case of Dawkins v Ash Brothers Ltd [1969] 2 All ER 246 in which the House of Lords dealt with a question about whether a valuation for rates purposes could be affected by a demolition order which required a property to be demolished in the very near future. For the majority, Lord Pearce stated at page 252B-1 (Mr Hutton BL emphasis added]:

"My Lords, the question here is **whether reduction in value due to an impending demolition orders comes within that area of rating where realities are acknowledge or within that where necessarily fiction prevails over fact**. It is near the border-line which separates those areas. **One has a natural inclination to prefer reality to fiction if and where this is compatible with the basis of rating, with the statute, and with the cases**.

Rating seeks a standard by which every hereditament in this country can be measured in relation to every other hereditament. It is not seeking to establish the true value of any particular hereditament, but rather its value in comparison with the respective values of the rest. Out of various possible standards of comparison it has chosen the annual letting value. This is appropriate since the tax is charged annually. One therefore has to estimate 'the rent at which the hereditament might reasonably be expected to let from year to year,' the tenant paying rates, repairs, etc. This standard must be universal even though in many cases it demands various hypotheses. In practice, sewage works, portions of railway lines, shops and factories where heavy and valuable machinery is installed are not let from year to year. So one must assume a hypothetical letting (which in many cases would never in fact occur) in order to do the best one can to form some estimate of what value should be attributed to a hereditament on the universal standard, namely a letting 'from year to year'. **But one only excludes the human realities to a limited and necessary extent, since it is only the human realities that give any value at all to hereditaments. They are excluded in so far as they are accidental to the letting of a hereditament. They are acknowledge in so far as they are essential to the hereditament itself.** It is, for instance, essential to the hereditament itself that it is close to the sea and that humans will pay more highly for a house close to the sea. One can therefore take that into account in the hypothetical letting. It is, however, accidental to the house that its owner was shrewd or that the rich man happened to want it and that therefore the rent being paid is extremely high. **In the same way I think it would be accidental to the hereditament that its owner intended to pull it down in the near future. For the hereditament might have had a different owner who would not pull it down. So the actual owner's intentions are thus immaterial since it is the hypothetical owner who is being considered. But when a demolition order is made by a Superior power on a hereditament within its jurisdiction different considerations apply. The order becomes an essential characteristic of the hereditament regardless of who may be its owner or what its owner might intend. That particular hereditament has had**

branded on its walls the words 'doomed to demolition whatever hypothetical landlord may own it'. Thus the demolition order, by being a fact which is essential to and not accidental to the hereditament itself, prima facia cannot be excluded as irrelevant or shrouded by any necessary cloud of fiction."

And [Lord Pearce at page 251-254B]

"It is conceded, as I think it must be, that if the state or construction of some hereditament was such that it must predictably collapse in a year, its impermanence would be a relevant fact in estimating the rent, i.e. there could not be imputed to a hypothetical tenant the advantage of contemplating an indefinite continuance of tenancy. If this be right, I find it difficult to see why there should be a difference in principle between demolition by force of gravity (and the elements) **and demolition by force of government. Both are superior forces which bear alike on a hereditament.** Either may turn out to bear less harshly than was anticipated; but this is no more than saying that any prediction may be falsified by events. On principle, therefore, I think that the Lands Tribunal and the Court of Appeal were right."

In that same case Mr Hutton BL asked the Tribunal to note that Lord Wilberforce made the case that comparing a building liable to be demolished to buildings that were not, for rating purposes, would produce an unfairness, where he stated at page 258 D-E:

"Lastly, it was suggested that to allow this reduction would destroy the necessary basis of uniformity between one lot and another. This would be a serious objection if the fact were so, but it is not. **The essence of the ratepayer's claim is that their hereditament differs from others in the locality.** It is as if on the red portion, but nowhere else, that were fixed a board enscribed 'Due for demolition in 1965'. **There is nothing, happily, in rating law which prevents property with such a mark of death from being assessed differently from its unmarked neighbours**."

And (Lord Pearson in the same case at page 258 F-G):

"My Lords, in my opinion, there is in the law of valuation for rating a principle that the statutory 'machinery', which at the material time was contained in S22(1)(b) of the Rating and Valuation Act 1925, is **adaptable and should, whenever this is possible, be so**

operated as to produce a just and true result, attributing to the hereditament its actual annual value – the real value of the beneficial occupation to the occupier – **rather than some artificial and fictitious value**."

And (further in the same case Lord Pearson at page 262 B-F):

"It was also said on behalf of the valuation officer that equality of rating requires that each hereditament should be valued as it is now – rebus sic stantibus – and the prospect of a future partial destruction of its must be disregarded. But it seems to me that this point can be turned against the valuation officer. In the expression rebus sic stantibus which are the res? In other words, which are the factors to be take into account in order to produce equality of rating? There is, in this case, a present probability of a future happening, and the present probability affects the present value of the hereditament. **There is inequality of actual values if two otherwise identical hereditaments one is likely to have a part of it demolished within about a year and the other is likely to remain intact. If they had to be deemed to be of the same value, although in fact one is worth less than the other, there would be artificiality and fiction and unfairness in the valuations**. Lord Parmour said in Poplar Metropolitan Borough Assessment Committee v Roberts [1922] 2 AC at pp 120, 121; [1922] All ER Rep at p203:

'In ascertaining this annual value, all that can reasonably influence the judgement of an intending occupier ought to be taken into consideration, including not only the natural conditions, but any statutory provisions which may tend either to enhance or diminish the value of the beneficial occupation of the property or its profit-earning capacity.'

The mind of the hypothetical tenant would be affected by the prospect that within about a year he would probably lose a portion of his premises, whether the loss was expected to arise from some physical cause such as a building being brought down by subsidence or sliding over clay into the sea or from **some governmental action such as requisition by a Minister or dispossession and demolition by a local authority**."

70. Ms Mulholland BL considered the case of Dawkins v Ash Brothers Ltd to be of no assistance in the subject reference for the following reasons:

(i) It concerned the interpretation of a completely different piece of legislation, Section 22(1)(b) of the Rating and Valuation Act 1925, which concerned the valuation of domestic property by way of annual rental value and provided for a hypothetical tenancy in respect of which there was no similar para 15 assumption, such as in the subject reference.

(ii) Lord Pearce stated at p384:

> "My Lords the question here is whether reduction in value due to an impending demolition order comes within that area of rating where realities are acknowledged or within that where necessarily fiction prevails over fact. It is near the border-line which separates these areas. One has a natural inclination to prefer reality to fiction if and where this is compatible with the basis of rating, with the statute and with the cases."

She submitted that the appellant's preference towards reality was incompatible with the basis of rating of domestic properties in Northern Ireland, was incompatible with the wording of the Rates Order and was incompatible with the previous cases of the NIVT and the Lands Tribunal.

71. The Tribunal agrees with Ms Mulholland BL, the Court in Dawkins v Ash Brothers Ltd was concerned with the interpretation of completely different legislation and which did not contain an assumption similar to the para 15 assumption. The Tribunal finds this authority to be of limited assistance but notes the following extracts at page 252 B-1:

> "It (Rating) is not seeking to establish the true value of any hereditament ..."

And

> "This standard must be universal even though in many cases it demand various hypotheses."

And

> "So one must assume a hypothetical letting (which in some cases would never in fact occur) ..."

And

> "One has a natural inclination to reality over fiction if and where this is compatible with the basis of rating, **with the statute** [Tribunal emphasis] and with the cases."

72. The principle of reality can therefore only apply when it is compatible with the statute. In the subject reference reality must comply with the para 15 assumption. Mr Hutton BL considered that his submitted authorities indicated, that unless there was a clear, statutory assumption that overrode "the reality principle", planning considerations were relevant to the notional sale or rental value that was used in the hypothetical valuation analysis.

73. He submitted that there was nothing in the para 15 assumption that disinhibited the NIVT from taking into account the incidence of the "demolition order" on the valuation of the reference property and the NIVT should have recognised the fact that the demolition order rendered the reference property effectively unsellable and worthless on the open market. A strict adoption of the "open market" test provided for in Schedule 12, paragraph 7(1) of the Rates Order should have provided a "nil" valuation and he submitted that the NIVT were in error not to so conclude.

74. Ms Mulholland BL asked the Tribunal to note that the appellant had not provided one single authority from the Northern Ireland jurisdiction that supported his argument that the para 15 assumption could be rebutted or displaced by evidence. She referred the Tribunal to three previous decisions of the NIVT which she considered treated the assumptions at paragraphs 9 to 15 of Schedule 12 to the Rates Order as mandatory as a matter of course. Ms Mulholland BL summarised each case (which was not disputed):

(i) <u>Alan Fletcher v Commissioner of Valuation NIVT 9/2</u>

Mr Fletcher contended that his pre 1919 semi-detached house was totally uninhabitable and would take a large amount of money to put it into a liveable standard. He argued a valuation of £20,000 to £25,000 but later made representations that the property was derelict and should be zero rated. The NIVT's

decision was that despite the property being in a serious state of disrepair it was found not to have such structural defects that would result in its deletion from the Valuation List and that on completion of the repair work the property would be capable of beneficial occupation. The NIVT reduced the Capital Value assessment by £10,000, giving a Capital Value of £90,000. In doing so the NIVT accepted the respondent's argument that the assumption at paragraph 12 of Schedule 12 applied, namely that the property was in an average state of internal repair and fit-out, therefore the NIVT's assessment was based solely on issues of external repair.

(ii) Galbraith v Commissioner of Valuation NIVT 42/15

In this case the appellant's challenged the valuation of their house on three grounds:

(a) The close proximity to an amenity site with concerns of possible contamination and the presence of fly tipping;

(b) Miscalculation of gross external area of the property; and

(c) The presence of a wind turbine and its effect on the value of their property.

At paragraph 7 of the decision the NIVT dealt with the statutory assumptions and said:

"It is necessary at this stage to set out the assumptions which LPS must work to in assessing Capital Value which are those contained in Schedule 12, paragrapsh 9 to 15 of the Rates (Northern Ireland) Order 1977

(i) That the property if sold, was to be sold with vacant possession.

(ii) That title to the property was by way of Fee Simple or by way of Long Lease

(iii) That the property is sold free from any other rent-charge or encumbrance.

(iv) That the property was in an average state of internal repair and fit out, having regard to the age and character of the property and its location.

(v) That the property is in the same circumstances as it would have been expected to have been on the relevant date, defined as 1st April 2007.

(vi) That development value is not to be taken into account.

(vii) That the property has all the necessary statutory consents."

The NIVT concluded that in the absence of clear evidence of contamination and having regard to the statutory assumptions it would be wrong to consider the risk of contamination as justifying a reduction in capital value. The NIVT was, however, prepared to give a capital allowance to reflect the issue with fly-tipping and the wind turbine, such matters not being precluded from consideration by the statutory assumptions.

(iii) Adam Cochrane v Commissioner of Valuation 30/14

The appellant contended that his property should have no capital value because it did not benefit from planning permission. The NIVT held that it was bound by Schedule 12, paragraph 15 of the 1977 Rates Order and to assume that there had been no relevant contravention of any statutory provision, requirement or obligation which would affect the capital value of the hereditament; therefore it must assume the property has the necessary planning permission and that the property had a value.

75. Ms Mulholland BL considered the Cochrane case to be exactly on point with the subject reference.

76. The Tribunal would stress that it is not bound by the decisions of the NIVT. In any case Mr Hutton BL submitted that the subject reference involved something other than an absence of planning permission simpliciter and involved, in effect a "demolition order". The Tribunal agrees, the subject reference was not on point with the Cochrane case. In the subject reference the appellant was in breach of two statutory obligations, planning permission and an Enforcement Notice.

77. The Tribunal therefore derives little assistance from all of these submitted authorities.

Statutory Interpretation of the Para 15 Assumption

78. Ms Mulholland BL referred the Tribunal to an Explanatory Memorandum which she considered summarised the main elements of the Rates (Capital Values, etc.) (Northern Ireland) Order 2006. She referred the Tribunal to paragraph 29:

> "Paragraph 9 of Schedule 2 to the Order provides that there has been no contravention of any legal obligation, whether arising under legislation, an agreement or otherwise, which would affect the capital value of the property."

Paragraph 9 of Schedule 2 to the Order was effectively in the same terms as Schedule 12, Paragraph 15 of the 1977 Rates Order, the para 15 assumption.

79. The Tribunal agrees with Mr Hutton BL, however, who submitted that this paragraph did nothing more than "parrot" the wording of the provision and gave no definition to the meaning of the word "any" in the provision itself.

80. Ms Mulholland BL also referred the Tribunal to a public consultation document entitled "Proposal for a Draft Order in Council the Rates (Capital Values, etc) (Northern Ireland) Order 2005" which ultimately became the Rates (Capital Values, etc) (Northern Ireland) Order 2006. The relevant sections are paragraphs 34 and 43:

> "34. The assumptions that will be applied when assessing the capital value of a property are summarised in the following paragraphs and largely mirror those used for Council tax purposes in Great Britain, though some important changes have been made to reflect the different system to be introduced here – a discrete system rather than banding. These assumptions are necessary to ensure consistency and equality of treatment across the wide range of domestic properties being revalued."

And

> "43. Illegality. It will be assumed there is no contravention of any legal obligation which would affect the capital value of the property, whether the obligation arises under

legislation, an agreement or otherwise. This means that, for example, where there has been a breach of planning legislation or building regulation, the property will be valued on the basis that there was no such breach."

81. Ms Mulholland BL stressed to the Tribunal that the respondent did not rely on either the Explanatory Memorandum or the 2005 Consultation Document as an assurance from the Government to Parliament of the clear meaning of the statutory assumption, but merely to confirm the context, the mischief and the intention of parliament within the permissible bounds of interpretation and for that purpose the two documents were unquestionably admissible.

82. Mr Hutton BL referred the Tribunal to Bennion on Consultation Papers, 7th Edition incorporating supplement which reads (Mr Hutton BL emphasis added).

" **Consultation Papers**

The fact that a report is a consultation paper does not affect its admissibility, **at least for the purposes of ascertaining the contextual setting of the legislation or the mischief at which it is aimed**.

Example

In *Belhaj v DPP* the Supreme Court considered whether judicial review of a decision not to prosecute is a proceeding 'in a criminal cause or matter' for the purposes of the Justice and Security Act 2013, s6 (closed material declarations). In referring to the Green paper that preceded the legislation Lord Sumption said:

'[22] The explanation of the distinction given in the Green Paper appears in a section at p7 headed 'Criminal vs Civil: Why criminal proceedings are out of the scope of this Paper'. This is relevant not as guide to the meaning of the words of a Bill which had not yet been published, but as evidence of the mischief behind the distinction between civil and criminal causes or matters.'

Example

In *Melville Dundas Ltd v George Wimpey UK Ltd* Lord Neuberger referred to the fact that a particular construction was consistent with a consultation paper that preceded the publication of the relevant legislation. A consultation which merely invites views on a subject without proposing a solution **is unlikely to carry much weight**." [Mr Hutton BL emphasis]

83. It was up to the Tribunal to consider what weight should be attached to the two documents submitted by Ms Mulholland BL. There were significant submissions from both counsel about the status of the 2005 Consultation document with regard to the statutory interpretation of the para 15 assumption. The Tribunal does not find it necessary to consider in detail these authorities and submissions as it finds the 2005 Consultation Document to be of limited assistance, in that it merely states that where there has been a breach of planning legislation for example the property will be valued on the basis that there has been no such breach. That was not controversial and had been applied by the NIVT in the Cochrane case. However, that was not the circumstances in the subject reference where there were breaches of two statutory obligations; planning permission and Enforcement Notice.

Conclusion

84. Mr Hutton BL submitted that whilst the NIVT considered themselves bound to assume that the property had benefited from planning permission, even though it had not, on the basis that they were to assume compliance with the requirement to obtain planning permission, they failed to take the further step required by the language of the para 15 assumption by assuming that there had been no relevant contravention of the statutory obligation imposed by the Enforcement Notice. He submitted that where the NIVT had felt obliged to assume compliance with the one, they should have likewise assumed compliance with the other, with the nett effect that they should have assumed that the property had been demolished as of the valuation date, resulting in a Nil valuation.

85. Ms Mulholland BL considered that there was no ambiguity of the language in the para 15 assumption and it was open to the Tribunal to discern its purpose from simply reading the relevant provisions. She submitted that on a clear reading of the para 15 assumption the Tribunal must assume that there has been no breach of planning legislation for it was the development of the hereditament without planning permission which effected its capital value.

86. She considered that whether the appellant had complied with the Enforcement Notice or not was not a contravention which effected the capital value of the hereditament; the enforcement notice was a mere consequence of the breach of planning legislation and to focus on it, as the appellant argued the Tribunal ought to do, by necessity required the Tribunal to acknowledge the breach of planning, as opposed to ignore it, which the assumption clearly prohibited the Tribunal from doing.

87. The Tribunal agrees with Ms Mulholland BL, the para 15 assumption required the Tribunal to assume that the reference property had a valid planning permission. Based on that assumption no Enforcement Notice would arise as it was a consequence of the breach of planning permission. The Enforcement Notice stated at paragraph 3 that the reason for the Enforcement Notice was "development being carried out without planning permission". To acknowledge the Enforcement Notice would require the Tribunal to ignore the initial statutory assumption that the reference property had valid planning permission.

88. The Tribunal upholds the decision of the NIVT and dismisses the appeal.

20th December 2019 **Henry M Spence MRICS Dip.Rating IRRV (Hons)**

Lands Tribunal for Northern Ireland

<u>Appearances</u>:

Appellant – Mr Dessie Hutton BL instructed by Madden & Finucane, Solicitors.

Respondent – Ms Maria Mulholland BL instructed by the Departmental Solicitor's Office.