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: 18/14

JOHN WALLACE – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr David McKinney FRICS and Dr Peter Wardlow

Date of hearing: 29 May 2015, Belfast

DECISION

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland is upheld and the appellant's appeal is dismissed.

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order"). There was no appearance before the tribunal by or on behalf of the appellant and the respondent, both parties being content to rely on written representations.

2. The appellant by Notice of Appeal appealed against the decision of the Commissioner (on appeal) dated 18 March 2014.

3. This appeal is in respect of the valuation of a hereditament situated at 298 Finvoy Road, Rasharkin, Moneyleck, Ballymena, BT44 8SD ("the subject property").

The law

4. The statutory provisions are to be found in the 1977 Order as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). The tribunal does not intend in this decision to set out the statutory provisions of article 8 of the 2006 Order, which amended article 39 of the 1977 Order as regards the basis of valuation, as these provisions have been fully set out in earlier decisions of this tribunal.

5. An issue in this case arises in relation to the listing of the property as a hereditament in the capital value list. Article 2(2) of the 1977 Order states;

> " "hereditament" means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in a valuation list.

6. In relation to unoccupied property, the Rates (Unoccupied Hereditaments) Regulations (NI) 2011 ("the 2011 Regulations") provide that domestic dwellings and parts of buildings for the purposes of the 1977 Order are to be subject to rating (subject to certain statutory exceptions). Therefore rates are payable on an unoccupied domestic property at the same level as if the property were occupied. These provisions came into force on 1 October 2011.

7. Reference will be made later in this decision to the relevant case law to which the tribunal was referred by the parties.

The evidence

8. The tribunal heard no oral evidence. The tribunal had before it the following documents:

   (a) The Commissioners Decision dated 18 March 2014;
   (b) The appellant's Notice of Appeal dated 5 July 2014, stamped as received in the tribunal office on 31 July 2014;

(c) A document entitled 'Presentation of Evidence' dated 15 October 2014, prepared on behalf of the respondent Commissioner by Mr Andrew Magill MRICS and submitted to the tribunal for the purposes of the hearing;

9. The matter was listed before the tribunal for hearing on 16 January 2015. At 18.41pm on 15 January 2015 written submissions in the form of an email were sent to the tribunal by Murphy Irwin Solicitors on behalf of the Appellant. The matter was adjourned on 16 January 2015 to permit the Respondent to have an opportunity to respond to the submissions. The Respondent did respond in the form of a note dated 3 February 2015. No further documents were submitted to the tribunal.

The facts

(1) The property is an inter war semi-detached bungalow of rendered brick construction with a standard slate pitched roof. The property has a gross external area (GEA) of 125$m^{2.}$ The Respondent confirms that the capital value of the property was assessed at £105,000. An application to the District Valuer on 16 September 2013 resulted in no change to the assessment. An appeal to the Respondent on 18 February 2014 resulted in the amendment of the valuation to £90,000.

(2) The appellant contends that the property is a one bedroomed semi needing rewired re-plumbed and roof repaired. He further contends that it has no garage and is unlettable.

The appellant's submissions

10. The appellant, in the email from his solicitor, states that the property is presently unoccupied and is in a dilapidated state. He indicates that it does not have a bathroom, garage or garden. The property suffered a burst pipe and would need to be replumed [sic], an exercise that has not been carried out due to the appellant's impecuniosity. He also states that it would be impossible to occupy the property until such times as it was rewired as the current electrical wiring is unsafe. The appellant further states that had he the option he would demolish the

property. However this is not possible as the property is connected to his own property at 300 Finvoy Road, Rasharkin by virtue of a hipped roof. The appellant avers that the open market value of the property is £40,000.

The respondent's submissions

11. In the Commissioner's Presentation of Evidence to the tribunal, Mr Magill indicates that as the appellant is calling into question the repair of the property the tribunal should consider the approach as to whether a hereditament exists as outlined in *Wilson* v *Coll (Listing Officer).* The Presentation of Evidence goes on to outline some extracts from the judgment of Mr Justice Singh in that case.

12. In relation to the present appeal the respondent states that the fabric of the building is intact with no obvious defects. The property was stated to be in average condition for the age and character of the dwelling and therefore a hereditament exists. It was noted by the respondent that there are some damp patches in the property. These were stated not to be abnormal for a property of this type and character.

13. The respondent submits that the fact that there is no bathroom in the property and that the property needs rewired and re-plumbed cannot be taken into account due to the statutory assumption that the property is in an average state of fit out. It also states that neither a garage nor a garden have been included in the assessment.
14. The respondent also states that the personal circumstances of the appellant are not a relevant factor when assessing capital value.

15. In relation to the capital value of the property, reference was made in the Presentation of Evidence to a list of comparable hereditaments in the same state and circumstances. Details of these comparable properties were set out in a schedule to the Presentation of Evidence dated 15 October 2014, with further particulars of same, including photographs of the comparable properties. Three

comparables were referred to in total in the Presentation of Evidence. These were capital value assessments, the details of which are as follows:

(a) The first comparable referred to was 300 Finvoy Road, Rasharkin. It is an inter war semi-detached bungalow with a gross external area of 199m^2 and a garage of 39.9m^2. The assessed Capital Value is £145,000. There is no sales evidence for this property.

(b) The second comparable referred to was 25 Moneyleck Road, Rasharkin. It is a pre 1919 semi-detached cottage with a gross external area of 118$m^{2.}$ The assessed Capital Value is £115,000. There is no sales evidence for this property.

(c) The third comparable referred to was 16 Moneyleck Road, Rasharkin. It is a pre 1919 semi-detached cottage and has a gross external area of 153m^2. The assessed Capital Value is £135,000. There is no sales evidence for this property.

The Tribunal's Decision

16. While it is not expressly stated that the appellant submits that the property does not consist of a hereditament, in view of the general thrust of his arguments and rebutting contentions by the respondent it is appropriate for the tribunal to consider in the first instance whether there is a hereditament on the property before considering the capital value issue.

The listing issue

17. The respondent referred the tribunal to the judgment of Mr Justice Singh in the English High Court decision of *Wilson* v *Josephine Coll (Listing Officer)* [2011] EWHC 2824 Admin. In that case the learned judge considered the principles to be applied in deciding whether a property was a hereditament for the purposes of the English valuation list. He stated (at paragraphs 39, 40 and 41 of his judgment):

> "In answering the question correctly the respondent submitted to me what in fact should be asked as a question which is posed for Listing Officers to consider in a practice note to the council tax manual, practice note number 4. The question is as follows: "Having regard to the character of the property and a reasonable amount of repair works being undertaking could the premises be occupied as a dwelling?"
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> I accept that as a general matter of law the crucial distinction for the purposes of deciding whether there is, or continues to be, a hereditament should focus on whether a property is capable of being rendered suitable for occupation (in the present context occupation of a dwelling) by undertaking a reasonable amount of repair works. The distinction which is correctly drawn by the respondent, in my view, is between a truly derelict property, which is incapable of being repaired to make it suitable for its intended purpose, and repair which would render it capable of being occupied for the purpose for which it is intended.
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> The crucial distinction in that regard is not between repairs which would be economic to undertake or uneconomic to undertake as I have already indicated, that submission and my conclusion in accepting it, does force from the fact that the concept of the reasonable landlord considering something to be uneconomic is simply absent from the present legal regime, whereas in fact in a legal regime whereas it is present in the legal regime which governs non-domestic rating".

18. The tribunal has also considered the recent judgment of the Northern Ireland Valuation Tribunal in *Whitehead* v *Commissioner of Valuation* in which the tribunal considered the question as to whether the subject property was a hereditament for the purposes of the rating list. In that case the President of the Northern Ireland Valuation Tribunal helpfully considered the case of *Wilson* v *Coll* and its applicability to Northern Ireland. The relevant parts of the judgment in *Whitehead* v *Commissioner of Valuation* are as follows:

> "23. To the material extent, Northern Ireland domestic rating law, likewise, does not include any "economic test" if it could be described as such. The issue accordingly identified by the English court in ***Wilson v Coll*** could be expressed in the form of a question. That question is - having regard to the character of the property and a reasonable amount of repair works being undertaken, could the premises be occupied as a dwelling?
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> 24. The tribunal, as mentioned, is not bound to follow the approach taken in ***Wilson v Coll*** and is free to determine the matter in any way that

seems proper, in the absence of a precedent or authority of any binding character being cited or drawn to the tribunal's attention. However, in order to depart from the approach taken by the English court in ***Wilson v Coll***, the tribunal would need to identify a proper basis for taking a different approach. The point, of course, in ***Wilson v Coll*** is that there was no mention of any "economic test" in the English statutory provisions, and a similar position prevails in Northern Ireland in regard to the rating of domestic property. The determination of this tribunal, accordingly, is that the same general approach ought to be adopted in Northern Ireland, but with the important qualification mentioned below.

25. In determining the issue, it is easy to envisage a truly derelict property that on no account ought properly to be included in the valuation list. At the other end of the spectrum, as it were, there exist many properties which are unoccupied but which require only very minor works of reinstatement or repair to render these readily habitable. The difficulty, as the tribunal sees it, in the absence of any specific provision expressly enabling the tribunal to take economic factors into account (and in the light of the position as stated in ***Wilson v Coll***) is to adjudge what might be deemed a "reasonable amount of repair works". Clearly, it would be wrong to include a property on the rating list which required an "unreasonable" amount of repair works to render the property in a state to be included in the list. How then is the concept of "reasonableness" to be tested?

26. "Reasonableness" is generally regarded as being the standard for what is fair and appropriate under usual and ordinary circumstances - the way a rational and just person would have acted. In discussing this, the tribunal had some difficulty in comprehending how what is reasonable or otherwise could be tested if one entirely disregarded some of the true realities of the situation, including those which most would impact upon decision-making. Obviously a reasonable person would not wish to expend a very substantial amount of money upon the repair of a nearly worthless property. Leaving aside for the moment any statutory considerations, the reality, for any reasonable domestic property owner, must in some manner connect with the issue of potential expenditure and the worth of any property both before and after any repair and reinstatement. To that extent, the tribunal has some difficulty with the judgment of Mr Justice Singh in ***Wilson v Coll***, for the learned judge as far as can be observed did not proceed to give any account of how the concept of "reasonableness" might otherwise be tested. It is possible to expend an unreasonable sum upon the repair of a nearly worthless property; or, leaving aside monetary considerations, to expend an unreasonable amount of labour or of time in the repair of such a property. Any truly derelict property (in the common perception) might thus, by expending an unreasonable amount of money or an unreasonable amount of time and labour upon repairs, be capable of being placed in a state where it could indeed be occupied as a dwelling and thus be rated as a hereditament. Of course to do so would be to act irrationally and unreasonably by any normal assessment of things. Having accepted that there is no mention of any "economic test" in the relevant statutory

> provisions in Northern Ireland (as in England), the tribunal's view is that the only common sense and proper way to look at things is to examine the specific factual circumstances of any individual case and to take all material factors into account in taking the broadest and most common sense view of things in addressing the issue of whether or not, having regard to the character of the property and a reasonable amount of repair works being undertaken, the property could be occupied as a dwelling. Accordingly, the tribunal is reluctant to lay down any rigid principle that, in effect, inhibits or prevents the tribunal from taking a proper, comprehensive and broad view " in the round" of all the relevant facts. This is so when conducting an assessment of what is reasonable, or otherwise, in relation to repair works necessary to render any property in a state to be included in the rating list. Tribunals across the broad spectrum of different statutory jurisdictions in Northern Ireland are designed, within the system of justice, to engage in decision-making in an entirely practical and common sense manner, applying the inherent skills and expertise of the tribunal members in the assessment of any material facts and by proper application of the law to any determined facts, and should be enabled to undertake this task in a properly-judged and comprehensive manner, provided that the law is properly interpreted and observed in the decision-making."

19. The tribunal notes that the approach taken by the Northern Ireland Valuation Tribunal in the *Whitehead* case is a persuasive authority however it has been adopted in subsequent decisions of this tribunal in cases such as *O'Har*e v *Commissioner of Valuation* and *Fletcher* v *Commissioner of Valuation*. Therefore this tribunal determines that the same general approach as espoused in *Whitehead* should be adopted in this case.

20. In relation to the facts of this case in considering the question "having regard to the character of the property and a reasonable amount of repair works being undertaken could the property be occupied as a dwelling, the tribunal prefers the evidence of the respondent that the fabric of the building is intact with no obvious defects. It also finds that while there are repairs and improvements required if a reasonable amount of repair works were carried out the property could be occupied as a dwelling.

21. As to the nature of the works required to the property the appellant has indicated that the property would need to be rewired and replumbed and the roof repaired. However he has not submitted any figures to support the cost of the work required to be undertaken to the property.

22. The tribunal has considered all the points made by the appellant and his solicitor and the points made by the respondent in the Presentation of Evidence and in its note dated 3 February 2015. Weighing up the arguments advanced and the material considerations the tribunal's unanimous decision is that the subject property as it stands, in the state and condition described in the evidence, is properly to be included in the rating list as a hereditament. The appellant's appeal on that point fails accordingly.

23. In the light of the decision that the subject property is a hereditament it falls to consider the capital value issue.

The capital value issue

24. 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. In this case the capital value has been assessed at a figure of £90,000. On behalf of the Commissioner it has been contended that this figure is fair and reasonable in comparison to other properties. The appellant's contentions are as stated above and the appellant contends that the proper valuation should be less than £50,000 and the open market value of the property is £40,000.

25. It is appropriate to remember that there is a statutory presumption in Article 54(3) of the 1977 Order in terms 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 in any case to challenge and to displace that presumption, or perhaps for the Commissioner's decision to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.

26. In this case the tribunal accepts that the best comparable available is 300 Finvoy Road, Rasharkin. This is a pre 1919 semi-detached cottage which has a larger gross exernal area than the subject property and has a garage. Furthermore 16 Moneyleck Road, Rasharkin is a pre 1919 semi-detached cottage with a larger

gross external area and no garage and has a capital value of £135,000. The tribunal finds 25 Moneyleck Road, Rasharkin which has a smaller gross external area than the subject property not as good a comparable.

27. The tribunal carefully considered the issue as to whether the appellant had provided sufficient challenge to the Commissioner's schedule of comparables. Taking all matters into account the conclusion of this tribunal is that the appellant has not placed before the tribunal sufficient evidence to displace the statutory presumption as to correctness of the capital value and therefore the appeal is dismissed and the tribunal orders accordingly.

Mr Charles O'Neill
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 23rd June 2015