

**NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007
CASE REFERENCE NUMBER: NIVT 16/19**

**RYAN ADAIR - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

Northern Ireland Valuation Tribunal

**Chairman: Mr Alan Reid (Legal Chairman)
Members: Mr Brian Reid (Valuer) and Mr Bob McCann (Lay Member)**

Belfast - 10th November 2020

DECISION

The unanimous decision of the Tribunal is that the Appeal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 19th August 2019 is allowed and that the Capital Value of the property at 3 Burnview Terrace, Ballyvally, Banbridge, Co. Down BT32 4DJ be assessed at £42,000 and that the Valuation List be amended accordingly.

REASONS

1. Introduction

- 1.1 This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (“the 1977 Order”).
- 1.2 By a Notice of Appeal received by the Tribunal on 11th September 2019 the Appellant appealed to the Northern Ireland Valuation Tribunal against the Notice of Decision issued by the Commissioner of Valuation for Northern Ireland (“the Commissioner”) dated 19th August 2019 in respect of the Valuation of a hereditament situated at 3 Burnview Terrace, Ballyvally, Banbridge, Co. Down BT32 4DJ (“the Subject Property”)

1.3 The Appeal was conducted by way of a remote hearing using Webex technology. The Appellant participated on his own behalf. Mr Steven Jeffrey accompanied by Mr Gerard McGennity appeared for and represented the Commissioner as Respondent. The Appellant participated only by audio on his telephone throughout. The chairman initially participated by both audio and video but, due to technical difficulties, resorted to audio participation only from an early point in the hearing. All other participants participated by both audio and video throughout the hearing.

2. **The Law**

2.1 The relevant statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). The statutory provisions regarding the basis for valuation are contained in Article 8 of the 2006 Order which amended Article 39 of the 1977 Order and had been fully set out in numerous previous decisions of this Tribunal. The Tribunal does not therefore intend in this decision to fully set out the statutory provision of Article 8.

3. **The Evidence**

3.1 The Tribunal had before it the Appellant’s Notice of Appeal received by the Tribunal on 11th September 2019 and copies of various documents including: -

- Valuation Certificate in respect of the Subject Property issued on 19th August 2019.
- A document entitled “Presentation of Evidence” submitted on behalf of the Commissioner by Mr. Gerard McGennity MRICS of Land and Property Services and received by the Tribunal on 30th July 2020.

- Correspondence between the Tribunal and the Parties

3.2 At the commencement of the hearing of the Appeal both parties confirmed that all of these documents had been provided to each of them and that they had had an opportunity to consider them prior to the hearing.

4. **The Facts**

On the basis of such information as was before it, the Tribunal determined, upon the balance of probabilities, the following facts: -

4.1 The hereditament is a privately built mid-terrace house constructed around 1930 and situated at 3 Burnview Terrace, Ballyvally, Banbridge, Co. Down BT32 4DJ (“the Subject Property”). The Subject Property was stated to be owned by the Appellant who was the rate payer.

4.2 The Subject Property is two-storied. The gross external area (“GEA”) of the house is 56.8 m². There had previously been a covered yard at the rear of the property which had provided 7 m² of ancillary space but, in consequence of the removal of the roof from that area, the Valuation Certificate in respect of the Subject Property issued on 19th August 2019 had provided for a reduction of the Capital Value from £48,000 to £45,000.

4.3 The Appellant at that time was planning a renovation and refurbishment of the Subject Property but those works had not been commenced when the Subject Property was inspected on behalf of the Commissioner for the purposes of issuing the Notice of Decision on 19th August 2019. Works have since commenced and were ongoing at the time of the hearing.

4.4 The Capital Value Assessment of the Subject Property is £45,000 at the Antecedent Valuation Date (“AVD”) that date being 1st January 2005. In arriving at the Capital Value Assessment figure of £45,000 regard was had

to assessments of properties in the Valuation List considered by the Respondent to be comparable. These comparables were set out in a Schedule to the “Presentation of Evidence” submitted on behalf of the Commissioner. There was a total of three such comparables, further particulars of which, including photographs, were provided.

5. The Appellant's Submissions

In summary, the Appellant made the following submissions -

- 5.1 The Subject Property was unoccupied, unfurnished and could not be used for storage purposes. It had no roof and some walls were demolished. It had no kitchen, toilet, washing facilities or heating and construction work was ongoing. A rear extension had now been built and preparatory works for the internal fit-out of the property had been carried out.
- 5.2 It was contended by the Appellant that the Capital Value of the Subject Property at £45,000 was excessive and that in its present unfinished state the Capital Value should be £10,000.
- 5.3 Whilst the Appellant did not seek to challenge the Capital Values of any of the comparable properties put forward in the Respondent’s Presentation of Evidence or the suitability of their state and circumstances as comparables, he contended that when the size and Capital Value of the property at 5 Burnview Terrace Banbridge were compared with those of the Subject Property and the Capital Valuation “per square metre of floor area” was calculated this resulted in a figure of £687.50 per square metre for 5 Burnview Terrace compared to £792.50 per square metre for the Subject Property. He felt that if a value of £687.50 per square metre was applied to the Subject Property this would result in a Capital Value of £39,050 which still would not take account of the current lack of facilities in the Subject Property.

5.4 In response to questions from the Tribunal as to what outcome he was seeking from his Appeal (whether a £10,000 Capital Value for the Subject Property or its removal from the Valuation List), the Appellant stated that he had bought the property for £10,000 on the basis of two valuations which he had obtained at that time and that he therefore felt that £10,000 should be the Capital Valuation.

6. The Respondent's Submissions

In summary, the following submissions were made on behalf of the Commissioner -

6.1 With regard to the state of renovation of the Subject Property the Respondent referred the Tribunal to its previous acceptance in other appeals of the English High Court decision of **Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin)** as authority for the proposition that the Subject Property should be regarded as a hereditament to be included in the Valuation List if, having regard to its character and a reasonable amount of repair works being undertaken, it could be occupied as a dwelling. The Respondent contended that the Appellant's ongoing works were in fact evidence that such repair works were being carried out so that the Subject Property could be occupied as a dwelling.

6.2 It was submitted on behalf of the Commissioner that the Capital Value of the Subject Property had been correctly assessed in accordance with the 1977 Order and in particular that the statutory assumptions as set out in Schedule 12 had been correctly applied. In particular reference was made to the assumption that "the Subject Property is in an average state of internal repair and fit out, having regards to the age and character of the hereditament and its locality" in accordance with paragraph 12 (1) of Schedule 12.

- 6.3 With regard to the Appellant's suggestion that the Capital Value should be ascertained by an arithmetical "value per square metre" calculation, the Respondent referred the Tribunal to previous decisions of the Tribunal such as **Ahmed v CoV** in which the Tribunal had determined that this was not the correct approach to adopt in determining a Capital Value.
- 6.4 On behalf of the Commissioner it was also submitted that in accordance with paragraph 7 (2) of Schedule 12 to the 1977 Order regard had been had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances as the Subject Property. Mr McGennity contended that the comparable hereditaments referred to in the Respondent's Presentation of Evidence supported a confirmation of the Capital Value of the Subject Property at £45,000. All of the said comparables were terraced two storey dwellings in the Ballyvally Ward of Banbridge and, like the Subject Property, all were constructed between the First and Second World War.
- 6.4.1 The property at 17 Burnview Terrace, Banbridge had a GEA of 64 m² which was slightly larger than the Subject Property and also had outbuildings of 5.6 m². It was submitted that this was reflected in its higher Capital Value of £52,000.
- 6.4.2 The property at 5 Burnview Terrace, Banbridge had a GEA of 70 m² which was still larger than the Subject Property and also had outbuildings of 10 m². It was submitted that this was reflected in its higher Capital Value of £55,000.
- 6.4.3 The property at 31 Burnview Terrace, Banbridge had a still larger GEA of 68 m² but had no outbuildings. It had a Capital Value of £53,000. Again the Respondent's submission was that this supported the Capital Value of £45,000 in respect of the Subject Property.
- 6.5 All of the comparable properties put forward by the Commissioner had unchallenged Capital Values. It was submitted on behalf of the

Commissioner that the comparables demonstrated that the Capital Value of the Subject Property was “in tone” with the comparable properties in the Valuation List.

- 6.6 In response to questions from the Tribunal as to what allowance was made in respect of outbuildings where relevant in the comparable properties and what allowance was made for the fact that one of the comparable properties, 17 Burnview Terrace, was an end-terrace rather than a mid-terrace property), it was submitted on behalf of the Respondent that no distinction was made in valuation terms between a mid-terrace and end-terrace property but that outbuildings would enhance value. It was submitted on behalf of the Respondent that the 10 m² outbuilding at 5 Burnview Terrace would contribute £5,000 to the Capital Value of that property and that the 5.6 m² outbuilding at 17 Burnview Terrace was similar to that which had previously existed on the Subject Property and that therefore it would contribute £3,000 to the Capital Value of 17 Burnview Terrace.

7. The Tribunal's Decision

- 7.1 The Tribunal acknowledges the courteous approach of both parties to the preparation and presentation of their submissions to the Tribunal and thanks the parties for their patience and co-operation during the conduct of the remote hearing.
- 7.2 Although at hearing the Appellant did not expressly argue that the Subject Property should not be regarded as a hereditament to be included in the Valuation List by reason of its state of renovation, for the avoidance of doubt the Tribunal confirms that it considered the Respondent’s contention that, in accordance with the authority of the decision in **Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin)** the Subject Property should be regarded as a hereditament to be included in

the Valuation List because, having regard to its character and a reasonable amount of repair works being undertaken, it could be occupied as a dwelling. The **Wilson** decision has previously been considered by the Tribunal in a number of previous appeals and most particularly in **Whitehead Properties Ltd v Commissioner of Valuation**. Applying the principles enunciated in that decision to the particular facts of this case, the Tribunal considers that the Appellant's ongoing works are themselves evidence that such repair works are being carried out so that the Subject Property could be occupied as a dwelling and therefore that the Subject Property is correctly included as a hereditament in the Valuation List.

- 7.3 Turning to the matter of the Capital Value of the Subject Property, Article 54 of the 1977 Order enables an Appellant to appeal to the Tribunal against the decision of the Commissioner as to Capital Value of a Subject Property. In this case the Capital Value has been assessed at the AVD at a figure of £45,000. On behalf of the Commissioner it has been contended that that figure is fair and reasonable in comparison to other properties and the statutory basis for valuation has been referred to and especially reference has been made to Schedule 12 to the 1977 Order in arriving at that assessment.
- 7.4 The Tribunal must begin its task by taking account of an important statutory presumption contained within the 1977 Order articles 54(3) of the 1977 Order provides: *"On an appeal under this Article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown"*. It is therefore up to the Appellant in any case to challenge and to displace that 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.
- 7.5 The Tribunal is satisfied on the evidence that the initial assessment as to Capital Value has been carried out in accordance with the prescribed

manner as set out Schedule 12 of the 1977 Order. The evidence submitted as to comparables and the submissions on behalf of the Commissioner lead the Tribunal to conclude that the correct statutory approach has been followed.

7.6 The Tribunal then turns to consider whether there is sufficient evidence in the arguments made by the Appellant to displace the statutory presumption.

7.7 As has been the case in other Appeals considered by the Tribunal, the Tribunal rejects the Appellant's contention that the Capital Value of the Subject Property should be determined by comparing its size and Capital Value with those of another property and thereby arithmetically calculating the Capital Value per square metre of the respective properties. Such an approach would not be in accordance with the provisions of the relevant legislation as referred to above.

7.8 The Tribunal carefully considered all of the evidence and submissions of the parties with regard to the comparable properties drawn to the attention of the Tribunal.

7.9 Whilst the three comparable properties put forward on behalf of the Commissioner for consideration were all helpful, the Tribunal considered that on the balance of probabilities, if the outbuildings at 17 Burnview Terrace and 5 Burnview Terrace were disregarded, the £45,000 Capital Value of the Subject Property would be broadly "in tone" with the three comparable properties as far as habitable space was concerned. However, it was accepted on behalf of the Respondent that in both cases the outbuildings contributed to the Capital Values applied to numbers 17 and 5 Burnview Terrace. Furthermore, it was accepted on behalf of the Respondent that the outbuilding at 17 Burnview Terrace was similar to that which had existed at the Subject Property and in respect of which a

£3,000 reduction had been applied to the Capital Value of the Subject Property following its removal. Accordingly, the Tribunal finds on the balance of probabilities that the Capital Value of the Subject Property should be reduced by £3,000 to bring it “into tone” with the Capital Values of the comparable properties relied upon on behalf of the Respondent.

7.10 Having carefully considered the particulars and Capital Values of all of the comparable properties put forward by the Respondent and the evidence and submissions of the Appellant and the Respondent in relation to them, the Tribunal is satisfied on the balance of probabilities that the appropriate Capital Value Assessment of the Subject Property at the AVD of 1st January 2005 is £42,000.

7.11 Accordingly, the unanimous decision of the Tribunal is that the Appeal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 19th August 2019 is allowed and that the Capital Value of the property at 3 Burnview Terrace, Ballyvally, Banbridge, Co. Down BT32 4DJ be assessed at £42,000 and the Tribunal directs that the Valuation List be amended accordingly.

**Mr Alan Reid, Chairman
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: 14 December 2020