

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: 17/20

RITA CONNELL & CORNELIUS BROWNE – APPELLANTS

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr C Kenton FRICS & Mrs N Wright

Hearing: 25 October 2021, Belfast

DECISION

The unanimous decision of the tribunal is that the appeal is upheld.

REASONS

Introduction

1. This appeal consists of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellants, by Notice of Appeal (Form 3) received by the tribunal on 18 December 2020 appealed against the decision of the Commissioner of Valuation in a Valuation Certificate in respect of the capital valuation of a hereditament situated at number 35 Lough Road, Cullyhanna, Newry, County Down BT35 0QR ("the property"). By Order made by the President dated 21 December 2020 time was extended to the appellants to deliver a Notice of Appeal in the matter.
2. The appellants, in making this appeal, indicated that they were content for the appeal to be disposed of by written representations. The respondent concurred. The tribunal sat to hear the matter on 25 October 2021.

The Law

3. 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"). As is now the case in all determinations of this nature, the tribunal does not intend in this decision fully to set out the detail of the statutory provisions of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, for the reason that these provisions have been fully set out in many previous decisions of the Valuation Tribunal, readily available. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter. Antecedent Valuation Date ("AVD") is the date to which reference is made for the assessment of Capital Values in the Valuation List. Until a further domestic property revaluation occurs, Capital Values are, under the statutory regime, notionally assessed as at 1 January 2005, that being the AVD for the purposes of the domestic rating scheme. The legislation, at Schedule 12, paragraph 7 of the 1977 Order provides that the Capital Value of a hereditament shall be the amount which, on the assumptions mentioned (materially paragraphs 11 and 12 of Schedule 12, the details of which are mentioned below), 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. The relevant paragraphs of Schedule 12 include the following statutory assumptions, which provide that –

- The hereditament is sold free from any rentcharge or other incumbrance;
- The hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality;
- The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

Regarding the rating of unoccupied hereditaments, in summary detail the statutory provisions which concern the rating of empty homes are included in the Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 (“the 2011 Regulations”). From 1 October 2011 domestic buildings and parts of buildings (as well as non-domestic buildings or parts of buildings) for the purposes of Article 25A of the 1977 Order became subject to rating. (This latter is subject to certain statutory exceptions, which do not apply in this case). Accordingly, rates are levied upon an unoccupied domestic property at the same level as if the property were to be occupied.

The tribunal shall further allude to some case law authorities which, whilst not binding upon the tribunal, are nonetheless persuasive. These have provided assistance in decision-making in this case.

The Issue to be Determined and the Evidence

4. A central issue in this case relates to the state and condition of the property at the material time. The tribunal considers that in this case, as presented by the appellants, the proper focus of the tribunal ought to be placed upon the state and condition of the property at that time. The tribunal had before it the appellants’ Notice of Appeal to the tribunal (Form 3) dated 11 December 2020 and the documents also included those following:

4.1 The appellants’ Notice of Appeal to the Commissioner of Valuation which, on the copy provided, bears the date 23 October 2020.

4.2 Copy of a letter from the appellant, Ms Connell, entitled “To Whom It May Concern” dated 19 October 2020.

4.3 Copy of a letter dated 21 May 2020 addressed to the appellant, Mr Browne, from Mr Sean Farrell BSc (Hons) MRICS CIOB, Chartered Building Surveyor, regarding the property.

4.4 Copy Valuation Certificate in regard to the property, issue date 30 September 2019, signed by the Commissioner of Valuation.

4.5 A document dated 11 June 2021 entitled "Presentation of Evidence" prepared on behalf of the Commissioner, as respondent, by Mr Eugene McGrade MRICS and submitted to the tribunal. This includes a timeline which indicates the following material dates:

22 December 2009 - the District Valuer places the property in the Valuation List;

7 May 2020 - the appellants submit a claim that the property is derelict and, following an external inspection, it is determined that the property should remain in the Valuation List. However, the Capital Value is reduced from £70,000 to £50,000 to reflect comparable Capital Value evidence in the locality. A Valuation Certificate is issued on 22 July 2020 confirming this revised Capital Value;

19 August 2020 - the decision of the District Valuer is appealed to the Commissioner of Valuation. By this stage the property has been demolished (date of demolition not stated). However, based on evidence provided by the appellants it is determined that the Capital Value should be further reduced to £30,000 to reflect poor external repair. A Valuation Certificate is issued on 30 September 2020 confirming this;

21 December 2020 – the decision of the Commissioner of Valuation is appealed to the tribunal.

4.6 A document entitled "Response to Presentation of Evidence" submitted to the tribunal by the appellants, undated but received by the Tribunal Secretary on 9 August 2021.

4.7 A document from Mr Stephen Jeffrey, Senior Valuer, on behalf of the respondent Commissioner dated 11 August 2021 in response to the foregoing appellants' "Response to Presentation of Evidence".

4.8 Copies of various emails to the Tribunal Secretary from the appellants and on behalf of the respondent and emails from the Tribunal Secretary to the parties.

The Appellants' Submissions

5. Examining the essence of the case made by the appellants in this appeal, the tribunal finds the content of the letter from the appellants dated 19 October 2020 to be helpful as this, in relatively clear and comprehensive terms, explains the appellants' position in this appeal. Therein the appellants assert that the property is a derelict dwelling which was constructed in the 1900s and is over 100 years old. The assertion is that, for the entire time that dwelling had been standing, there had never been a rates bill issued. The appellants further assert that they were informed by LPS that the reason behind there being no rates billing was because LPS did not know who owned this stated derelict dwelling and therefore that LPS could not issue a rates bill to the owner. The appellants take issue with that latter stated contention. They assert that the property was purchased in 2016 and that it had been previously registered with the Land Registry. Upon purchase, it was changed over to the purchasers' name. The assertion, accordingly, made by the appellants is that it would have been very simple for LPS to have obtained this information and to have issued a rates bill if they had felt it was warranted.

6. The further assertion made in the appellants' letter is that LPS had visited the property, once in 2014 and again in 2020. On both occasions LPS had failed to carry out a property building survey; that would have been vital in order to determine if the building was structurally stable. It is asserted that the fact of the LPS valuer taking a photograph of one elevation of the building did not constitute a survey, nor did it constitute proper evidence concerning the entire dwelling. It is asserted that a single photograph of one elevation was taken by LPS in 2014 and a single photograph of one elevation, again, was taken in 2020. Accordingly, the valuation by LPS was based on a total of two photographs, showing the same elevation of the building. The argument made is that LPS were required to enter the property and to walk around the entire property in order to complete, at the minimum, a visual inspection survey. If LPS had done this, they would have obtained a clear picture of the structural issues and, consequently, they would have not rated the property.

7. The appellants, upon being informed that the property was to be rated, arranged to get a building survey carried out. As a consequence of an inspection, the letter provided by them to LPS from Mr Sean Farrell confirms that the building was not structurally stable and that one elevation was sinking in the ground which would have required structural underpinning. It is further asserted by the appellants that the building showed structural cracks, that the roof covering was incomplete resulting in water ingress, and that there was a significant amount of damp throughout the entire building. The timber roof structure was unstable. In general terms, the assertion is that LPS has failed to pick up on all of the evidence and has failed to realise that the property was

not only uninhabitable but that it was also not rateable. The fact that LPS had indeed changed the valuation, demonstrated that LPS were not confident as to the valuation that had been carried out on the building. If the contrary were the case, LPS would not have changed the value based on the issues highlighted by the appellants during the last LPS visit. It is, further, asserted that the assumption of internal repair ought not to be a factor in the case as the building was not structurally stable. There is also advanced a point concerning the economic viability in LPS pursuing the matter. Finally, it is asserted that the property had not been occupied for over 30 years, that there was no bathroom or sewage connection, running water or electricity. There was no garden or driveway. The appellants' concluding assertion is that they did things properly in that they obtained a property survey and then they "knocked the building", as they put it.

8. There were further submissions on the part of the appellants including those made in response to the Presentation of Evidence. The arguments which the appellants would seek to add to the foregoing include references to their surveyor's report stating that the building was not structurally stable and that it could not be taken back to a good state of repair. The surveyor's report is contended to be the only information in the case, whereas LPS have looked at one elevation and "assumed" that the property could be taken back to a good state of repair. An asserted contradiction is highlighted by the appellants between the apparent receipt of rates payments from October 2011 until February 2013 from a previous owner and the assertion (alleged to have been made by the LPS Valuer, Mr McGrade) that one reason rates had not been levied was because LPS were unaware of the owner (this latter appears to refer back to the Land Registry registration of ownership issue). A further and distinct issue raised by the appellants concerns the matter of the comparables listed in the Appendix to the Presentation of Evidence. Some observations are made concerning these in order to endeavour to challenge the appropriateness of any comparables. The tribunal will return to these assertions, as necessary, below.

The Respondent's Submissions

9. The property has been described in the Presentation of Evidence based upon an external inspection stated to have been conducted by the District Valuer on 16 June 2020. The specific identity of the person conducting that inspection is not made clear in the Presentation of Evidence. However, it is understood to have been conducted by Mr McGrade. It is asserted that there was no record of any inspection taking place in 2014, as suggested by the appellants. In the Presentation of Evidence it is stated that the property was entered into the Valuation List on 22 December 2009 and that a rates bill was paid from 1 October 2011 until 1 February 2013. It is stated that a "pending status" was

then recorded against the property from the latter date up to 22 February 2018 when LPS became aware of the appellants' ownership of the property. (The Presentation of Evidence refers to the owner in the singular whereas it is understood that the property might be jointly owned by both appellants, although that is not fully clear, as there are joint appellants). In May 2020 an application from the appellants was received by the District Valuer. The property was inspected externally by the District Valuer on 16 June 2020 and it was noted that there was no visible evidence of any structural defects. It was considered that the dwelling was in an average state of external repair. An outbuilding was noted to have been demolished and the Gross External Area ("GEA") was recorded. The Capital Value was reduced from £70,000 to £50,000 with effect from 1 April 2020.

10. By the time the appellants submitted an appeal to the Commissioner of Valuation, the property had been demolished and the LPS Valuer had to rely on evidence gathered by LPS concerning the circumstances as at the date of the District Valuer's certificate, together with evidence supplied by the appellants. A photograph taken on 9 September 2020 showing the site where the property had been located was included in the Presentation of Evidence. It was commented that the surveyor's report provided by the appellants, dated May 2020, confirmed a number of issues including a lack of insulation, no damp proof course and no chimney flashing. It was considered that this would be anticipated given the age of the property. However, based on this report, it was determined that the external repair should be amended to "very poor".

11. The Presentation of Evidence then proceeds to make specific submissions concerning what is known as the "hereditament test", with reference to a number of legal authorities, which will be further referred to below. The submission is that if one applies this "hereditament test" to the property, although it had been unoccupied for an extended period, the property was watertight and the fabric of the building appeared to be intact. It was accordingly considered that a hereditament continued to exist and that the property should remain in the Valuation List, with the Capital Value figure amended to reflect very poor external repair. It is asserted that the statutory position regarding internal repair must be taken account of. Further mention is made concerning the assessment of Capital Value regarding issues mentioned in the building surveyor's report, including evidence of water ingress, settlement and damp and that, whilst these issues would reasonably be expected in a property of this construction, type and age, the report indicates that the problems may have required remedial works and as a consequence the external repair of the property was reduced from "average" to "very poor". The comparative method of valuation is further referenced towards the conclusion of the Presentation of Evidence.

Mr Farrell's Report

12. The tribunal notes that the content of the surveyor's report from Mr Farrell is uncontroverted, to a very large degree, in the content both of the Presentation of Evidence and also in any submissions contained therein and presented thereafter by the respondent. The material observations set out in that report from Mr Farrell include the following matters: The property is in a general state of very poor repair. There is evidence of structural movement through settlement/subsidence which appears to have been ongoing for a period of time and which has resulted in stability risks of the building. This is considered to be a serious safety risk and it is advised by Mr Farrell that action is taken to address this immediately. The roof covering is incomplete, with significant evidence of prolonged water ingress. This is a risk to the stability of the timber roof structure with visible evidence of deterioration of the untreated timber members. There is settlement evident to the roof lines. This is considered to be a safety risk compounding the structural movement, as noted, and associated risk of collapse and the taking of immediate action is advised. The chimney has no visible flashing to the roof and the structure appears to be leaning. This could be associated with the foregoing issues. However, this does in itself, according to Mr Farrell, present a safety risk associated with stability and collapse and immediate action is advised.

13. There were further issues commented upon by Mr Farrell concerning such matters as there being no evidence of damp proofing and significant evidence of damp penetration through walls and floors, that the external render finish was in very poor condition as was the guttering and rain pipes, and that there was no evidence of the property being connected to any mains utilities such as water, electricity and drainage. The property was not serviced/accessible, with no evidence of a driveway or roadway. The concluding recommendation from Mr Farrell was that the property ought to be removed, given the significant structural and safety issues noted. In Mr Farrell's opinion the remediation works required and any associated costs to make the property safe would be in excess of any cost relating to the removal of the property and replacement.

14. As mentioned, the respondent has taken no steps to obtain anything in the nature of a technical structural engineering report or survey report to counter any of the foregoing. It is of course fully understood by the tribunal that it would not normally be the respondent's policy to do so in such circumstances.

The Tribunal's Determination of the Valuation Listing Issue

15. A preliminary issue of considerable significance in this case is whether the property, at the material time, ought to have been included in the Valuation List. This material time and the circumstances in respect of the property existing at that material time, at which time matters are properly to be scrutinised by the tribunal, are normally those prevailing at the date of the Commissioner of Valuation's decision on appeal by any ratepayer to the Commissioner. That determination by the Commissioner would then be subject to an appeal to the tribunal. However, in this case the demolition of the property appears to have occurred on some undefined date after 7 May 2020 when the appellants submitted a claim that the property was derelict which was followed by the inspection on behalf of the District Valuer, but before 19 August 2020; the Commissioner's Decision on Appeal was thereafter issued on 30 September 2020. So, although the tribunal has not been afforded a full account of the apparent demolition of the property together with any reference to the precise date upon which such demolition occurred, that latter is largely irrelevant for the reason that in this case the tribunal's scrutiny must relate to the circumstances prevailing at the time prior to demolition for the reason that any assessment of Capital Value by the Commissioner was made in reference to those circumstances. The primary question thus is whether or not the property in its material circumstances (prior to demolition) ought to have been included in the Valuation List.
16. The respective arguments are relatively straightforward. The appellants argue that the property was in such a state at this time that it ought not to have been included in the Valuation List and indeed that it was subsequently demolished, as advised by Mr Farrell. The respondent argues that, scrutinising the applicable legal test and the circumstances, the property ought to have been included in the Valuation List. In a number of previous cases the Valuation Tribunal has examined this issue. The primary law, as set out in a number of Valuation Tribunal decisions in this jurisdiction, has been consistent, the only issue of variance being the diverse factual circumstances pertaining to any individual case coming before the Tribunal to which this law shall be applied.
17. To state, firstly, the legal position: The respondent's submission quite correctly relies upon what is referred to as the test established in the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin.)*** and the judgement of (as he then was) Mr Justice Singh. The Presentation of Evidence, for that reason, cites portions of that judgement and also alludes to the fact that ***Wilson v Coll*** has been considered, in the Northern Ireland jurisdiction, in several appeals to the Valuation Tribunal.

18. The Valuation Tribunal, in earlier determinations, has made observations at some length, regarding the case of *Wilson v Coll*. This case was first considered in *Whitehead Properties Ltd v Commissioner of Valuation (Case Ref. 12/12)* where a detailed consideration and analysis of the principles and the appropriate application of these principles to the jurisdiction of Northern Ireland was rehearsed. There has been further consideration of the matter in such cases, to mention but a few, as *Trodden v Commissioner of Valuation (Case Ref. 38/15)*, *McCombe v Commissioner of Valuation (Case Ref. 43/15)* and *McAlpine v Commissioner of Valuation (Case Ref. 6/17)* the case of *McCombe* being expressly alluded to in the Presentation of Evidence.

19. In the briefest of summaries only therefore, the principles emerging from these latter cases are, firstly, that in Northern Ireland each case should be determined upon its own particular facts and circumstances. Secondly, that the essential concept of a "reasonable amount of repair" required in order to place any property into a proper state of habitation so as to be included in the Valuation List, must be determined by the application of sound common sense and in an entirely practical and realistic manner, as opposed to by the application of any overly-rigid principle or any slavish application of the narrowest of interpretations of the dicta of Mr Justice Singh in *Wilson v Coll*. Indeed, at this point it might be helpful to repeat again, by way of illustrating the point, the previously-cited hypothetical example of "Dunluce Castle". Dunluce Castle is "capable" (in terms that this could physically be done) of being repaired, perhaps to provide luxury accommodation. In common sense, the fact that it is "capable", in these terms, of being repaired cannot be disassociated from the extremely high economic cost and technical issues of repair. So, by no reasonable assessment could it be said that a "reasonable amount of repair" work would render (if classified as a domestic hereditament) Dunluce Castle a proper candidate for inclusion in the domestic Capital Valuation List. This somewhat extreme example hopefully serves to make the point. Furthermore, and thirdly, the tribunal is not entitled to take into account the individual circumstances of any appellant, including the personal financial circumstances of that party.

20. The tribunal now is required to apply these established principles to an assessment of the primary issue: whether or not the property ought to be included in the Valuation List. In doing so the tribunal is cognisant of the fact that the tribunal's determination of the issue must in each case depend upon the specific facts, derived from the evidence. What factors therefore are properly to be taken into account? The tribunal regards the report from Mr Farrell as being significant for the reason that there is a dearth of rebutting evidence or information available from the respondent's side, both in the Presentation of Evidence and also in any subsequent arguments advanced for the respondent. The respondent's case, in the main, is grounded upon the

legal principles rather than upon any evidence endeavouring to counter the content of Mr Farrell's report.

21. In the tribunal's assessment of that report, Mr Farrell provides quite a clear illustration of a structurally unsound building. In entirely unambiguous terms, Mr Farrell suggests that this structure ought to be forthwith demolished. In the tribunal's view this conveys the matter, in the absence of anything more, towards the dereliction end of the notional spectrum – between readily repairable, at one end, and truly derelict, at the other. Whilst the tribunal is not permitted to take account of the appellants' individual financial circumstances, the tribunal is nonetheless fully permitted to adopt an entirely common sense approach to the matter concerning whether or not, by the carrying out of a reasonable amount of repair works, the property might be made fit for habitation to such an extent as to be properly included in the Valuation List. The tribunal's fully considered assessment is that the property exists at a point too far along the notional spectrum to permit it to be properly included in the Valuation list. This is so for the reason that, upon the available evidence and at the material time, the property was derelict, taking account of the relevant considerations.

22. This being the tribunal's unanimous assessment, the tribunal does not need to further consider matters such as any evidence of comparables, nor any arguments in regard thereto. The appellants have thus argued, successfully in this instance, that the property ought not to have been included in the Valuation List as at the material date to which this appeal relates. The tribunal's determination is that, for the reasons indicated, the appeal must succeed and the property is to be deemed not properly included in the Valuation List as at the material date to which this appeal pertains. The appeal is accordingly upheld by the tribunal.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 16 November 2021

