NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007 (AS AMENDED)

CASE REFERENCE NUMBER: NIVT 24/19

IGNATIUS LUNNEY – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr Hugh McCormick and Ms Noreen Wright

Date of hearing: 29 March 2022

DECISION

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

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order").

The Law

2. 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. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in this matter.

The hearing

3. The hearing proceeded by way of a hybrid hearing with the members of the tribunal and the tribunal clerk and the appellant in the hearing room and the representative of the respondent Mr Jeffrey appeared by way of video link. The tribunal had before it the following documents:
   (a) Notice of appeal received 18 November 2019
   (b) Notice of extension of time dated 6 February 2020
   (c) Valuation certificate dated 26 September 2019
   (d) Presentation of Evidence dated 8 January 2021 and prepared by the respondent and submitted to the tribunal for the purposes of the hearing.
   (e) Copy email from the appellant to the respondent dated 9 February 2022
   (f) Report from Elliott York Partnership dated 3 February 2022 addressed to the appellant
   (g) Report from Elliot York Partnership dated 11 February 2021 addressed to a third party

The facts

4. The subject property is a privately built post 1990 two storey detached house (the subject property). It has gross external area (GEA) of 336.76m2. The capital value has been assessed at £235,000.

The appellant's submissions

5. The appellant made very detailed submissions including the submission of reports from Elliot York Partnership. he also gave oral evidence in relation to the matter. The tribunal is grateful to the appellant for the time and effort given to making the submissions. While it is not possible to refer to each and every aspect of the submissions in this decision, all the submissions were taken into account in arriving at this decision.

6. In his notice of appeal the appellant states that he understands that to be subject to rates the property needs to be sealed. He states that the subject property has no electrical or plumbing works, no ceilings, no floors, no stud walls, no external sewers, no ducting or piping of any kind. He further states that the windows have been smashed on three occasions and doors have been smashed in. If someone were living in the building the first floor level rates would have to be deducted which they have not been. The company has no money to finish the work and cannot get a loan and cannot sell or rent the property in its current condition.

7. The appellant indicated that the first he became aware of the issue with the rating of the property was when he received a rates bill for the property. He then appealed the capital value of the property in that in his submission it was not a hereditament. He indicated that while he had had sufficient funds to buy the property, he did not have enough to complete it and was unable to get a mortgage on the property due to the financial collapse at the time.

8. At the hearing the appellant indicated that he contacted the rates office and explained that the property was not sealed, the roof was not finished, no first fix of the plumbing and no electrical work at all. There was no water inside, no sewerage system. The doors were broken, there was no first floor in the house.

9. The appellant indicated that he concluded that he had to sell the house and it was sold at a loss. He sold it some 8-12 months ago.

10. The appellant submitted a report undertaken by Elliot York Partnership dated 3 February 2022 addressed to him. This report outlined that the property has been in a vandalised state since 2007 and is wholly unfurnished. The following works were stated to be required to make it habitable:

    - Complete the roof
    - Complete the rainwater goods
    - External re-rendering
    - Internal plastering and ceilings
    - Ground floor insulation and screed
    - First floor boarding
    - Plumbing and heating installation

- Electrical installation
- Internal joinery
- Floor finishes and decoration

11. The matters outlined in this report are amplified in a report dated 11 February 2021 which had been undertaken for a third party.

The respondent's submissions

12. The respondent submitted that the subject property was entered into the valuation list for the first time on 8 September 2015 with a capital value of £235,000. The appellant submitted an application on 21 January 2017 requesting that the subject property be removed from the valuation list on the basis that it was incomplete and unoccupied. A decision of no change was issued on 15 June 2017. Further application was made on 3 August 2017 and a decision of no change was issued on 22 August 2019. This decision was appealed to the Commissioner of Valuation on 11 September 2019 and a decision of no change was issued on 26 September 2019. This decision was appealed to the Valuation Tribunal.

13. The respondent submitted that a completion notice was issued to the appellant on 10 June 2015 confirming a completion date of 8 September 2015. This notice was not appealed and therefore is considered valid.

14. The respondent states that externally the subject property appears to be structurally sound. It was noted that some of the glass panes have been damaged. However, the respondent states that it does not warrant a change in the capital valuation given the minor nature of the damage. It is stated that the internal of the property is incomplete. However, in accordance with the legislation, the subject must be considered to be in an average state of internal repair and fit out. Thus, even though the first floor was not completed it was capable of being completed.

15. The respondent is of the view that notwithstanding these comments about the property condition both externally and internally for rating purposes it had to have regard to the hereditament test as described in *Wilson* v *Josephine Coll (Listing Officer)* [2011] EWHC 2824 (*Wilson* v *Coll*). In accordance with this test the respondent is of the view that the property is not truly derelict and is capable of repair and as such should still be

maintained in the valuation list. Once it has been established that a hereditament exists then the statutory assumptions must be applied including that the property must be assumed to be in an average state of internal repair and fit out. The respondent goes on to assess the capital valuation of the subject property in the manner outlined above.

16. In relation to the capital value of the subject property, reference was made in the presentation of Evidence to a list of comparable hereditaments stated to be in the same state and circumstances as the subject property. Details of these comparable properties were set out in a schedule to the Presentation of Evidence with further particulars of same, including photographs of the comparable properties. These were capital value assessments, the details of which are as follows:
    (a) 67 Trasna Road, Tempo, Enniskillen, a privately built post 1990 detached 2.5 storey house with habitable space of 333.6m2 and a garage of 60.6m2 with access 210 metres from the roadside via unshared laneway. It has a capital value of £255,000.

    (b) 16 Tattykeeran Road, Tempo, Enniskillen, a privately built post 1990 detached 2 storey house with habitable space of 259.37m2 and access 150 metres from the roadside via a shared laneway. It has a capital value of £200,000.

    (c) 38 Greenhill Road, Ardmore, privately built post 1990 detached 2 storey house with habitable space of 332.7m2 (agricultural allowance) with access 330m from the roadside via laneway. It has an unadjusted capital value of £235,000.

    (d) 30 Greenhill Road, Ardmore, privately built post 1990 detached 2 storey house with habitable space of 338.2m2 and access 150m from the roadside via laneway. It has a capital value of £240,000.

The Tribunal's Decision

17. There are two main issues to be considered in relation to this case. These may conveniently be referred to as the listing issue and the capital value issue. Each of these will be considered in turn.

The listing issue

18. In relation to the listing issue the tribunal's attention was drawn by the respondent to the decision in *Wilson* v *Coll* and in particular the decision of Singh J. In the light of this the respondent stated that the question the tribunal had to decide was "having regard to the character of the property

and a reasonable amount of repair works could the premises be occupied as a dwelling?".

19. In relation to this matter the tribunal has considered recent judgments of the Northern Ireland Valuation Tribunal including those in *Whitehead* v *Commissioner of Valuation* (12/12) and in *McGivern* v *Commissioner of Valuation* (19/16). In the *Whitehead* case 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?
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 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 embers 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."

20. In another decision of the Northern Ireland Valuation Tribunal, that of *Lindsay* v *Commissioner of Valuation* (07/16) it was held:

"In the briefest of summaries only therefore, the principles emerging from these latter cases include, 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 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 it must be said that a rather colourful (and of necessity extreme – to make the point) illustration of this latter was provided by the Valuation Member in the course of this hearing when the Member cited the hypothetical example of "Dunluce Castle". It is a fact that Dunluce Castle is "capable" (in terms of the proposition that this could physically be done) of being repaired, perhaps it might be postulated, to provide luxury hotel accommodation on the Causeway Coast. The mere fact that it is "capable", in these terms, of being repaired cannot be disassociated from the extremely high economic cost and the technical issues of doing so. Not upon any reasonable assessment could it be properly said that a "reasonable amount of repair" would be required and thus that (if it were classified as a domestic property) Dunluce Castle ought to be included in the Valuation List. This extreme example hopefully serves to make the point. Thirdly then, the Valuation Tribunal in making this determination is not entitled to take into account the individual circumstances of any appellant, including the personal financial circumstances of that party."

21. Thus, the question for the tribunal to consider is whether the property is such that – having regard to the character of the property and a reasonable amount of repair works being undertaken, could the subject property be occupied as a dwelling? In this regards the tribunal has to take a broad view of all the facts relevant to this case in applying the decision-making factors included in the *Whitehead* case.

22. Each of these cases turned on their own specific factual circumstances. As the President of the Valuation Tribunal stated in *McGivern* v *Commissioner of Valuation*

"Having accepted, in previous decisions of the Valuation Tribunal, that there is no "economic test" comprised in the relevant statutory provisions in Northern Ireland, the view has also been that the only proper approach is to examine the fact-specific circumstances in individual cases, thereby taking proper account of any relevant factors. A realistic and a common-sense approach needs to be taken. It is for these reasons that the tribunal has been reluctant to formulate any rigid principle that might otherwise prevent such a proper, common-sense, view being taken of all the relevant facts and information. Any undue restriction or any overly rigid approach might otherwise lead to the absurdity alluded to above.

23. For these reasons, each case must be adjudged specific to its own facts. In this case the appellant has drawn attention to the various works which were required to bring the property to such a condition that it would be habitable. These are stated to be the following:

- Complete the roof
- Complete the rainwater goods
- External re-rendering
- Internal plastering and ceilings
- Ground floor insulation and screed
- First floor boarding
- Plumbing and heating installation
- Electrical installation
- Internal joinery
- Floor finishes and decoration.

24. The appellant further indicates that he did not have the funds to be in a position to do the works and could not get access to a mortgage to fund the works. It is clear that the Valuation Tribunal in making this determination is not entitled to take into account the individual circumstances of any appellant, including the personal financial circumstances of that party. Therefore, the tribunal cannot take such matters into account.

25. As against the evidence given by the appellant, the respondent states that it considers that the property is a hereditament and should therefore be included in the valuation list.

26. Weighing up the evidence placed before the tribunal by the appellant and the respondent, the tribunal is satisfied that having regard to the character of the property and a reasonable amount of repair works being undertaken to the property, the property could be occupied as a dwelling. It will be appreciated that this applies to this case only and the tribunal recognises that each case will be such that it has to be considered on its own facts.

27. Therefore, the conclusion of this tribunal unanimously is that a hereditament exists. The appellant's appeal on this point fails accordingly.

28. If the tribunal is satisfied that a hereditament exists, one of the statutory assumptions in Northern Ireland rating law is that the property is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality.

29. Having established that a hereditament exists the next question to consider is to establish the capital value of the subject property.

30. The Respondent has furnished comparable evidence in this case. The appellant has not sought to challenge the comparables referred to by the respondent in this case. In the light of this, the tribunal finds that the comparables are in order and that accordingly the capital value of the subject property in the sum of £235,000 is upheld.

31. Therefore, in this case the tribunal unanimously finds that the capital valuation of the subject property is upheld and that the appeal is dismissed and the tribunal orders accordingly.

Chairman: Mr Charles O'Neill

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 29 June 2022