

**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: 17/18**

**STEPHEN MURPHY – APPELLANT**

**AND**

**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr Charles O’Neill**

**Members: Mr Brian Reid FRICS and Mr Peter Somerville**

**Date of hearing: 22 July 2020, Belfast**

**DECISION ON REVIEW**

The unanimous decision of the tribunal is that there are no proper grounds made out by the appellant to enable the tribunal to review the decision of the tribunal dated 13 November 2019 and thus the tribunal’s decision is affirmed and the appellant’s application for review is dismissed.

**REASONS**

**Introduction**

1. This is an application for review of a decision of this tribunal (‘the decision’) in respect of a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (‘the 1977 Order’). The decision was issued to both parties by the Secretary of the Northern Ireland Valuation Tribunal (‘the tribunal’) on 13 November 2019.
2. The appellant, by email (‘the review application’) dated 27 November 2019 applied for a review of the decision. The appellant submitted a report by Jane D Burnside Architects dated 28 November 2019.
3. The review was listed for hearing on 29 January 2020. The hearing proceeded on that date. During the hearing, at the request of both parties, the matter was adjourned (part heard) to facilitate discussions between the parties and the submission of further written information.
4. Further information was submitted to the tribunal by the appellant by email dated 10 February 2020 and a response given by the respondent dated 11 February 2020.

5. In the light of the correspondence the Secretary to the tribunal wrote to the appellant seeking confirmation if he sought that the matter be re-listed for an oral hearing or if he was content that the matter proceeded on the basis of the papers and oral evidence given to date. By email dated 10 June 2020 the appellant confirmed that he did not require a further oral hearing in this matter. The respondent had also indicated that it was content that the matter be dealt with on the submissions to date.
6. The application for review was considered by the tribunal on 22 July 2020 by a remote hearing on the basis of the oral hearing and written submissions by the parties.

### **The Law**

7. The Valuation Tribunal Rules (NI) 2007 ('the Rules'), as amended provide at rule 21 as follows in respect of the review of any decision of the tribunal:

"21.-(1) If, on the application of a party or its own initiative, the Valuation Tribunal is satisfied that-

  - (a) its decision was wrong because of an error on the part of the Valuation Tribunal or its staff; (*the first ground*) or
  - (b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had good reason for failing to be present or represented; (*the second ground*) or
  - (c) new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; (*the third ground*) or
  - (d) the interests of justice require (*the fourth ground*)

the Valuation Tribunal may review the relevant decision."
8. The nature of a review application of a decision of the tribunal is that the appellant has in the first instance to establish proper grounds upon which the tribunal might proceed to review the decision. If such grounds are not established, then the matter cannot proceed to a review.

### **The Appellant's submissions**

9. The appellant submitted a report dated 28 November 2019 by Jane D Burnside Architects. This report indicated that the property was not in a habitable state and that it would cost £210,750 plus vat to repair it. Therefore, the appellant submitted that new evidence had become available showing that the cost to make the property habitable outweighs the market value of the property and therefore it may be argued that it would be unreasonable to value and indeed rate it. At the oral hearing of this application for review, the appellant was asked when the property was inspected in

relation to the preparation of the report. He indicated that the property had been inspected by the architect in January 2019. He indicated that he had felt that he could defend his case at the original hearing without the need for the report to be compiled as this would have cost £800.

10. In his further submissions to the tribunal by email the appellant stated, by way of second submission, that at the hearing the respondent had indicated that the provision of an inside toilet and fireplaces were not required and therefore an unnecessary cost as were rewiring and new floors. The appellant argued that his architect advised that under planning permission if a building is to be occupied and therefore rateable, it must have an inside toilet and fireplaces to provide basic heating and it also required to be rewired to health and safety standards within the regulations. The appellant indicated that he had been advised that because the property has not been lived in for at least the past ten years and had been used as an agricultural dwelling an application for a replacement dwelling would have to be made. He further indicated that for building control purposes a dwelling cannot have an outside toilet and therefore provision had to be made for an inside toilet.

#### **The respondent's submissions**

11. At the hearing of this matter the respondent had indicated that it was considered that the dwelling was a hereditament and was capable of repair and therefore should remain in the valuation list. In relation to the costings by the appellant's architect it was contended by the respondent that these costings related to modern day standards and regulations. However, the property had to be considered as an average pre 1919 property rather than a modern day property. The respondent stated that in a pre 1919 property there may not be an internal toilet but it would be capable of beneficial occupation. It was submitted that the costs regarding electrical, plumbing and internal floors, bathrooms and fireplaces were elements of modernisation.

#### **The Tribunal's determination of the issues**

12. As has been stated earlier, there are four possible grounds on which to base an application for a review of a decision of the Valuation Tribunal. The appellant has not indicated in his submissions which of the grounds he is relying on to base his application for a review. Therefore, the tribunal has assessed each of the appellant's submissions against each of the relevant grounds as a whole.
13. In respect of the second ground for review, that a party who was entitled to be heard at a hearing but failed to be present, had good reason for failing to be present or

represented, the original hearing proceeded by way of an oral hearing and so this ground does not apply to this case.

14. At this point it is worth pointing out that the review procedure is not intended to be a second bite at the cherry, for an appellant who feels he has not submitted his best case to the tribunal to have another go.
15. In the first of his submissions the appellant submits that the property is not in a habitable state and that it would cost much more than the value of the property to renovate it to a basic state. In this regard he relies on a report undertaken by his architect dated 28 November 2019. This issue was rehearsed in detail at the original hearing of this matter. Indeed, as noted in the decision issued by the tribunal, the appellant had indicated that it would cost at least £200,000 to bring the property into a fit state.
16. It is noted that in *Crawford v Commissioner of Valuation*, a previous decision of the Valuation Tribunal, the tribunal stated in relation to Rule 21(1)(a):

“The review procedure under this head is designed to correct obvious and fundamental flaws which arose because of human error, errors which when pointed out, are self-evident, patent and objectively, clearly erroneous. It is impossible to conjure up an exhaustive list of the type and nature of errors, which may be relevant, but if a Statement of Case failed to be included or dealt with at an appeal or if the body of one decision somehow became attached to the title of a different decision, such are the types of error which would entitle any party, or the NIVT of its own initiative, to seek a review.”
17. Applying this first ground for review, to this submission forwarded by the appellant, there is nothing in this submission that comes under the ground of obvious and manifest error in the decision.
18. In relation to the third ground for review – that new evidence to which the decision relates has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then, in respect of this submission the application for review on this ground must fail as well.
19. In this case, as confirmed by the appellant at the review hearing the property was inspected by his architect in January 2019 and indeed the figure of £200,000 to renovate the property was given by the appellant at the original hearing. He admitted that the reason that the report was not available at the original hearing was that he thought he did not need it to ‘defend his case.’ Therefore in the light of this, the report of the architect is not new evidence that has become available since the conclusion of the proceedings and its existence could not reasonably have been known or

foreseen before then and therefore the application for review must fail on this ground as well.

20. The question of where it would be appropriate to review a matter under the final ground in the 'interests of justice' has been considered by the tribunal in other cases, notably in *Cairns v Commissioner of Valuation*. In that case the President of the Valuation Tribunal concluded:

"In the absence of any identified authority within the tribunal's own jurisdiction being drawn to the tribunal's attention, the tribunal is of the view that the 'interests of justice' ground ought properly to be construed fairly narrowly; that certainly appears to be the accepted practice in other statutory tribunal jurisdictions. Thus the 'interests of justice' ground might, for instance, be seen to apply to situations such as where there has been some type of procedural mishap.... Generally it is broadly recognised that the 'interests of justice' in any case must properly encompass doing justice not just to the dissatisfied and unsuccessful party who is seeking a review but also to the party who is successful. Further, there is an important public interest in finality of litigation. The overriding objective contained within the tribunal's rules also bears upon the matter."

21. In the light of this, there is nothing in the applicant's submission that would warrant a review of the decision on this ground.
22. In relation to the appellant's second submission in relation to the costs as indicated in the architect's report, the tribunal notes that the question which the tribunal had to consider in this case was 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 property be occupied as a dwelling? In this regard the tribunal outlined in its decision the recent case law in this area, confirming that the tribunal has to take a broad view of all the facts relevant to the case applying the decision-making factors included in the *Whitehead* decision.
23. In deciding this case the tribunal in its original decision was satisfied that having regard to the test required, the property could be occupied as a dwelling. There is nothing in the appellant's second submission that would warrant a review of the decision on this ground as there is nothing that comes under the heading of an obvious and manifest error.
24. Neither does the appellant's second submission relate to new evidence in that the tribunal considered this issue relating to the repair of the property and whether, having regard to the character of the property and a reasonable amount of repair

works, in its original decision. Furthermore, the comments stated above in relation to the architect's report apply in relation to this submission as well.

25. Neither is there anything in the appellant's second submission to warrant that the interests of justice require a review of the decision.

### **Conclusion**

26. The tribunal having considered this matter in detail is satisfied that the appellant has not made out any of the grounds justifying relief pursuant to Rule 21 of the Valuation Tribunal Rules and it is the unanimous decision of the tribunal that its original decision remains unaffected and the application for a review is dismissed.

**Signed: Mr Charles O'Neill, Chairman**

**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to the parties: 16 September 2020**