

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: 21/20

SEAN McCARTNEY & JOHN McELHONE – APPELLANTS

AND

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

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr T Hopkins FRICS & Mrs N Wright

Hearing: 24 May 2022, Belfast

DECISION

The unanimous decision of the tribunal is that the appellants' appeal does not succeed and the appeal is dismissed by the tribunal.

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) appealed against the decision of the Commissioner of Valuation in a Valuation Certificate in respect of the Capital Value of a hereditament situated at number 48 Moss Road, Ballymaguigan, Magherafelt BT45 6LJ ("the property").
2. The tribunal sat to hear the matter on 24 May 2022. The appellants ultimately indicated (after some earlier discussion) that they were content for the appeal to proceed upon written representations. The respondent also agreed to that. The panel members attended in person.

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 pertinent 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; and
- The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

The Issue to be Determined and the Evidence

4. This is an unoccupied premises case. A central issue in this case relates to the physical condition of the property at the material time and unoccupancy, with the appellants arguing that the property is derelict, with structural issues (signs of cracking in the walls) making it unsafe for habitation. The respondent’s position is that the property fulfils the so-called “hereditament test” and thus ought properly to be included in the Valuation List. It is thus submitted that the Capital Value has been properly assessed in accordance with established principles and statutory considerations. Regarding the issue of the physical condition of the property at the material time (and the appellants’ arguments of “dereliction”), the respondent has sought to rehearse arguments that are often deployed concerning the “hereditament test”, more of which below. The tribunal had before it the appellant’s Form of Appeal to the tribunal (Form 3) dated 20 December 2020 and the documents also included the following:
 - 4.1 Copy Valuation Certificate in regard to the property, issue date 27 November 2020, signed by the Commissioner of Valuation (revised Capital Value of £60,000 indicated in substitution for a previous Capital Value of £90,000).

- 4.2 A document dated 29 June 2021 consisting of a Presentation of Evidence prepared on behalf of the Commissioner, as respondent, by Mr Eugene McGrade MRICS and submitted to the tribunal. This Presentation of Evidence includes a timeline which indicates, in a little detail, the following material dates:

8 May 2019: The appellants submitted an application to the District Valuer advising that the property was in a poor state of repair. The property was inspected externally on 27 August 2020 and it was determined that the property should remain in the Valuation List. No change was made to the Capital Value of £90,000 and a Valuation Certificate was issued on 7 October 2020.

4 November 2020: The decision of the District Valuer was appealed to the Commissioner of Valuation. It was determined that the external repair should be amended to “poor” with an amended Capital Valuation applied of £60,000. A Valuation Certificate was issued on 27 November 2020 confirming this.

27 November 2020: The decision of the Commissioner of Valuation was appealed to the Northern Ireland Valuation Tribunal.

- 4.3 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.

5. The Presentation of Evidence provides a property description (with which basic description the appellants do not appear to take issue). The property is a privately built 1946 – 1965 detached cottage constructed circa 1955 located in a rural setting 5 miles east of Magherafelt and 2.5 miles north of Ballyronan, County Londonderry. It has a Gross External Area (GEA) of 85.7 m² with a separately accessed boiler house of 10.2 m² (recorded as ancillary space) and outbuildings of 87.6 m². The property has been vacant for approximately 7 years and it is stated that the current Capital Value reflects a poor level of external repair. External photographs of the property are provided, including some specifically showing evidence of external cracks affecting the main structure. There is also a location map indicating the location of the property and some other properties which are submitted on behalf of the respondent as being comparable.

6. The Appendix to the Presentation of Evidence provides details in respect of a total of five identified submitted comparables, including the property. These are as follows (with a helpful location map) :-

1. **48 Moss Road, Magherafelt BT45 6LJ** (the property).
Ballymaguigan Ward. Privately-built 1946-1965 detached single-

storey cottage (built 1955), house outbuildings and garden, external repair poor, GEA 85.7 m², ancillary space 10.2 m², outbuildings 87.6 m², rural location. The Capital Value is £60,000.

2. **96 Annaghmore Road, Magherafelt BT45 8DU.** Ballymaguigan Ward. Privately-built 1946-1965 detached single-storey cottage (built 1954), house (agricultural), external repair poor, GEA 101 m², rural location. The (unadjusted) Capital Value is £65,000. Located 2.3 miles from the property.
 3. **43 Barrack Road, Magherafelt BT45 6LY.** Ballymaguigan Ward. Privately-built pre-1919 detached single-storey cottage (built 1910), house, external repair poor, GEA 98 m², rural location. The Capital Value is £58,000. Located 1.7 miles from the property.
 4. **26 Ballymaguigan Road, Magherafelt BT45 6LE.** Ballymaguigan Ward. Privately-built 1946-1965 detached single-storey cottage (built 1960), house, external repair average, GEA 91 m², rural location. The Capital Value is £87,500. Located 0.8 miles from the property.
 5. **48 Waterfoot Road, Magherafelt BT45 6LQ.** Ballymaguigan Ward. Privately-built pre-1919 detached single-storey cottage (built 1910), house (agricultural), external repair poor, GEA 95 m², rural location. The (unadjusted) Capital Value is £50,000. Located 0.6 miles from the property.
7. The tribunal has noted the submissions. The appellants submit: “*The house has been unlive d in since the death of the previous owner circa 2013. The house is now derelict with obvious signs of cracking in the walls making the (sic) unsafe for habitation*”. No additional arguments have been advanced by the appellants in this appeal and the appellants indicated that they were content for the appeal to proceed on this basis.
8. The case for the respondent in regard to the appellants’ assertion that the property is derelict and not properly to be included in the Valuation List, is one commonly advanced in appeals of this nature. Arguments centre around the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin)*** this being a judgment of the High Court in England and indeed a case which has been the subject of previous observations in a number of decisions of the Valuation Tribunal in Northern Ireland. For the respondent it is submitted that ***Wilson v Coll*** is relevant in that it

proposes the appropriate test to be applied: that test is a physical rather than an economic test. The critical distinction is not between repairs which would be economic to undertake (or uneconomic) but rather the proper distinction is between a truly derelict property which is incapable of being repaired to make it suitable for its intended purposes and repairs which would render it capable again of being occupied for the purpose for which it was intended. The Tribunal notes in this regard the respondent's submission based upon the previously-determined case of ***Eric McCombe v Commissioner of Valuation [NIVT 43/15]*** which references ***Whitehead Properties Ltd v Commissioner of Valuation [NIVT 12/12]*** (which latter was the first case in which the Valuation Tribunal interpreted ***Wilson v Coll*** as it might apply to the Northern Ireland jurisdiction). It is accordingly submitted for the respondent that, notwithstanding that the appellants consider the property to be derelict, applying the approach accepted by the Valuation Tribunal that is derived from ***Wilson v Coll*** (as exemplified in ***Whitehead*** and ***McCombe***) it is the respondent's view that, with a reasonable amount of repair works, the property could once again be occupied for its intended purpose, as a domestic dwelling. It is accordingly submitted that the property, whilst conceding it to be in poor repair externally and unoccupied for some time, could be made fit for habitation with a reasonable amount of repair works. It is submitted that the property appears to be largely weathertight and that the fabric of the building is intact and that the current Capital Value ascribed, £60,000, accurately reflects the state and circumstances of the property.

9. The respondent's case then proceeds upon the basis that the tribunal shall accept the proposition that the property shall be deemed correctly included in the Valuation List and the case for the correctness of the assessed Capital Valuation is made based on the statutory considerations and evidence of comparables included in the Presentation of Evidence, with specific submissions advanced in respect of these comparables.

THE TRIBUNAL'S DETERMINATION

10. The tribunal must accomplish two tasks in this appeal, in sequence. Firstly, it must determine whether or not the property is, as the respondent would argue, correctly included in the Valuation List. Only if the tribunal determines that this is so, does the tribunal then proceed to assess the correctness of the Capital Valuation. Dealing with the “listing issue”, the tribunal has noted the appellants’ objection in that regard. Assessing all of the available evidence and applying the relevant considerations, the tribunal is not persuaded that the property is in such a state and condition that it should not be included in the Valuation List. The respondent has readily conceded that the property is in poor external repair and indeed a significant reduction in the Capital Value has been afforded on this account. In previous cases (for example *Whitehead* and *McCombe*), the tribunal has commented that there is a notional spectrum ranging between a property which might require only a small amount of repair work to render the property fit for habitation - and true dereliction. Here, the tribunal assesses the property as existing towards the better end of that notional spectrum. Upon the evidence, it is capable of repair to render it fit for habitation. Thus, the property is correctly included in the Valuation List. That determination addresses the first issue.

11. The appellants have not expressly challenged the Capital Value assessment in this appeal. Nonetheless the tribunal believes that it is proper for this be scrutinised as to correctness. The focus is upon the situation prevailing at the time of the appeal. The general “tone” evidence submitted on behalf of the respondent was determined by the tribunal to be quite useful. Assessing all of the available evidence, the tribunal does not detect any significant deficiency or manifest error in the assessment of the Capital Value of the property. Examining the range of unadjusted Capital Values concerning the five properties presented, including the property, the valuation regime applied to the property seems to have correctly and accurately assessed the Capital Value. The potential for disadvantage in regard to the poor external repair has then been catered for by a Capital Value reduction by quite a generous amount, from £90,000 to £60,000, in order to reflect the issue of poor external repair.

12. As the tribunal has often observed, there is a statutory presumption contained within the 1977 Order, Article 54(3). Because of this, any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown. In order to succeed in an appeal to the tribunal, any appellant must either successfully challenge and displace that statutory presumption of correctness or perhaps the Commissioner's decision on appeal, objectively viewed, must be seen by

the tribunal to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the Capital Value to an appropriate figure. The tribunal, in assessing this appeal, saw nothing in the general approach taken to suggest that this has been approached for assessment in anything other than the prescribed manner, as provided for in Schedule 12 of the 1977 Order. This being so, as the appellants have not put forward (or may not be deemed to have put forward) any effective and compelling challenge to the respondent's schedule of comparables, nor any evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation, the presumption of correctness is not displaced.

13. For these reasons the tribunal's unanimous decision is that the appellants' appeal cannot succeed and accordingly, the appeal is dismissed.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 07 June 2022