

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: 14/20

FRANCIS McGINN - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr C Kenton FRICS and Mrs N Wright

Hearing: 25 October 2021, Belfast

DECISION

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

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 appellant, by Notice of Appeal (Form 3) appealed against the decision of the Commissioner of Valuation in a Valuation Certificate dated 7 December 2020 in respect of the capital valuation of a hereditament situated at number 29 North Street, Ballycastle, County Antrim BT54 6BW ("the property"). The appellant, in making his appeal, indicated that he was 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

2. 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 or “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.

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

The Issue to be Determined and the Evidence

3. One important issue in this case relates to the state and condition of the subject property, 29 North Street, Ballycastle, County Antrim BT54 6BW, at the material time. Only if the tribunal were to determine that the property had been properly included in the Valuation List at the material time, is a consideration then to be applied by the tribunal to the Capital Value issue. The tribunal, accordingly, first considered the relevant facts arising from the evidence concerning what might be termed the “listing issue”.

4. This is an appeal against the Commissioner’s Certificate of Valuation, dated 19 November 2020, with the appellant’s subsequent Notice of Appeal against that Certificate being made on 2 December 2020. The evidence is that the property was demolished on 11 November 2020 and indeed on 13 May 2021 the property was removed from the Valuation List. The date of demolition therefore precedes by a few days the date of the Commissioner’s Certificate of Valuation. The evidence from the respondent is that the District Valuer’s Certificate in respect of the property was dated 19 October 2020, which latter was then appealed to the Commissioner of Valuation by the appellant. The tribunal’s focus must therefore be upon the state and condition of the property in mid-October 2020 and prior to demolition in the mid-November 2020, for these are the circumstances that have been taken into account, firstly, in the District Valuer’s assessment and, furthermore, in the determination on appeal to the Commissioner of Valuation, as comprised in the Commissioner’s Certificate of Valuation.

5. With this initial focus in mind, the tribunal considered any documentary evidence emerging from the available documents, including any photographic evidence adduced. The tribunal had before it the appellant’s Notice of Appeal to the tribunal (Form 3) dated 2 December 2020 and the documents also included the following:-
 - The Valuation Certificate on appeal to the Commissioner of Valuation, dated 19 November 2020.

- A document dated 29 June 2021 entitled "Presentation of Evidence" prepared on behalf of the Commissioner, as respondent, by Mr Gerard Fitzpatrick MRICS and submitted to the tribunal.
 - Copies of various emails to the tribunal from or on behalf of the appellant and on behalf of the respondent and emails from the Tribunal Secretary.
6. The property has been described in Mr Fitzpatrick's Presentation of Evidence dated 29 June 2021. It is stated that the property description therein contained arises not on account of any survey carried out by Mr Fitzpatrick, but rather that the survey data have been updated "following an inspection by the DV" (date not being stated in the Presentation of Evidence) and this survey data are also described as being "not in contention". The reason for there being no inspection by Mr Fitzpatrick is stated to relate to government guidelines and travel restrictions which were in place to limit the spread of Covid-19. From a reading of the appellant's appeal form it appears that the appellant does not take issue with the descriptive details provided in the Presentation of Evidence as far as the condition and characteristics of the subject property are concerned, save to the extent mentioned below.
7. What is not in issue is that the subject property consists of a house, outbuildings and garden, being a privately-built pre-1919 detached two-storey house, constructed about 1910. It is located on North Street close to Ballycastle town centre and benefits from a sea view. It has a Gross External Area (GEA) extending to 221m², ancillary space of 15.4m² and outbuildings measuring 31.7m². The Presentation of Evidence does not provide any further detail of what would commonly be seen in such reports such as, for example window glazing, central heating, electricity and sewerage. The Presentation of Evidence does however state that the inspection which was completed on behalf of the District Valuer (no specific date confirmed in respect of this inspection and a copy of which inspection report has not been provided to the tribunal) confirms that the property at the date of inspection was in an average state of external repair, was structurally sound and weathertight, with both chimneys intact, no missing roof or ridge tiles, and with no visible evidence of any external defects. This latter inspection appears to have been carried out shortly before the date of the District Valuer's Certificate of 19 October 2020. The Presentation of Evidence further confirms that the

appellant, upon being contacted at the time of this inspection, explained that he had been granted planning permission to construct six apartments on the site of the property and that preparations for demolition were underway. However it is further stated that the appellant had confirmed, at this time, that preparations for any proposed demolition were internal only.

8. The material rating history set out in the Presentation of Evidence is as follows: 25 June 2020, the appellant submits an application to the District Valuer requesting that the property be removed from the Valuation List. The property was retained in the Valuation List but the Capital Value was amended from £275,002 £260,000. A Valuation Certificate was issued on 19 October 2020 confirming this action. 2 November 2020, the decision of the District Valuer was appealed to the Commissioner of Valuation. It was determined that the property should remain in the Valuation List. A Valuation Certificate was issued by the Commissioner of Valuation on 19 November 2020 confirming the outcome. 7 December 2020, the decision of the Commissioner of Valuation was appealed to the tribunal. 13 May 2021, the property was removed from the Valuation List by the District Valuer with effect from 11 November 2020, that being the date the property was demolished.

The Submissions of the Parties and the Tribunal's Consideration of the Issues

The Appellant's Submission

9. In the appellant's appeal form it is stated: "*I am pensionable age but have been living in a transit van since early 2019. [sic] this house has been uninhabitable from around this time*". No further grounds of appeal had been put forward by the appellant and the appellant has not responded specifically to any of the content of the Presentation of Evidence, including otherwise challenging any of the comparables evidence contained therein. Accordingly, in simple terms, the appellant's case is that, at the time of the challenged valuation, the property was uninhabitable.
10. On behalf of the respondent, the Presentation of Evidence provides a clear and comprehensive statement of the respondent's position in respect of this appeal. The

fundamental contention on behalf of the respondent is that the subject property, at the material date, was properly rateable and included in the Valuation List. Whilst the appellant might argue that the property was uninhabitable (and thus ought not to have been included in the Valuation List), the respondent's contention is that there must be an application of the so-called "Hereditament Test" and, applying that, the property falls into a category of hereditaments which, whilst in some state of disrepair, are nonetheless capable of being repaired and are, accordingly, properly to be included in the Valuation List. This latter contention (as do many cases of this nature) relies upon the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin.)*** and the judgement of (as he then was) Mr Justice Singh in that case. Accordingly the Presentation of Evidence cites portions of that judgement and also alludes to the fact that this has been considered, in the Northern Ireland jurisdiction, in several appeals to the Valuation Tribunal, for example in the case of ***Eric McComb v Commissioner of Valuation*** which itself makes reference to the case of ***Whitehead Properties Ltd v Commissioner of Valuation (Case Ref. 12/12)*** which latter case affirmed the Valuation Tribunal's approach in this jurisdiction. An extract from the foregoing is cited in order to reinforce the argument. The tribunal will comment further below upon these decisions and the principles emerging from these. Essentially, the respondent seeks to argue that the property could not be considered as being truly derelict: it is capable of being repaired in order to make it suitable for its intended purpose. If that point is successfully established, a hereditament is deemed to exist, capable of being included in the Valuation List.

11. The respondent's further submission is that the statutory provisions of Schedule 12, Paragraph 12 (1), of the 1977 Order are applicable. These provide for certain statutory assumptions concerning Capital Value. At Paragraph 12 (1) is stated the statutory assumption that the subject 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. Given this specific statutory assumption, it is submitted for the respondent that factors such as any internal preparations for demolition must be disregarded for the purposes of assessing the property for rating purposes. Accordingly, although planning permission had been granted to demolish the property and construct six apartments, at the date of the District Valuer's certificate the property remained in the character of a domestic dwelling and based upon the most appropriate comparables, which were outlined in

the appendix to the Presentation of Evidence, the existing Capital Value of £260,000 was, so it is argued, fair and reasonable.

12. The Presentation of Evidence includes two colour photographs of the exterior of the property which are submitted to support the respondent's argument in regard to the matter of external repair. In Appendix 1 to the Presentation of Evidence are included details of the subject property and also brief particulars of four other properties which are stated to be comparable to the subject property. Whilst the appellant did not seek to challenge the comparability issue in respect of these four properties, either collectively or individually, nonetheless the tribunal carefully considered any evidential material available from these.
13. The appellant has expressed the appeal in simple terms and has not sought to adduce any specific evidence to challenge the respondent's assessment of external repair. This is of course entirely a matter for any appellant in a case of this nature, especially so where any appellant might be endeavouring to argue dereliction and may wish to confine his focus to that issue.
14. The tribunal is obliged to take account of any evidence available, including any photographic evidence, whether that might tend to support or corroborate the respondent's or the appellant's contentions. Having considered any available evidence, the tribunal's assessment of the external condition does not lead the tribunal to the conclusion that there existed, at the material time, significant adverse structural or external repair issues. For example, the roof structure appears intact and the chimneys, walls and windows seem to be, likewise, intact. There is nothing else, in terms of compelling or persuasive evidence, to support the appellant's assertion that since 2019 the property has been uninhabitable.
15. The Valuation Tribunal, in earlier determinations, has made observations at some length regarding the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin.)*** for example in the case of ***Whitehead Properties Ltd v Commissioner of Valuation*** in which latter case the Valuation Tribunal conducted a detailed consideration and analysis of the principles to be extracted from ***Wilson v Coll*** and the appropriate application of these principles in Northern Ireland. Expressing these

principles in the simplest of terms: firstly, each case should be determined upon its own particular facts and circumstances; secondly, 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; thirdly, 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.

16. The difficulty for the appellant is that the appellant's case essentially rests upon an argument that the property is uninhabitable, not on account of any external factors but because of internal preparations for demolition. However, this is where a very important statutory assumption must come into play, which is often misunderstood. As mentioned above, Schedule 12, paragraph 7, of the 1977 Order provides that the Capital Value shall be the amount which, on the assumptions mentioned (at paragraphs 11 and 12 of Schedule 12) 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 important point is that the following statutory assumption must be applied: "*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*". This is an assumption in the application of which the tribunal has no discretion: it must be applied. The effect of this is that the tribunal is forbidden by the statute to take any account of the internal state of repair and fit out, under these circumstances. This would include any matters such as internal preparations for demolition. Thus, any such factors cannot be taken account of by the tribunal. That being the case, the tribunal is unable to uphold the primary argument advanced by the appellant. As there is no other evidence to support the proposition that the property ought not to be included in the Valuation List, the tribunal, by unanimous decision, accepts the respondent's argument.

17. That being the determination of the tribunal regarding the "listing issue", notwithstanding the appellant's failure to challenge any part of the comparables evidence and the respondent's arguments advanced in respect of this, in fairness to the appellant and in conducting its proper function, the tribunal did give consideration to this evidence and to the appropriateness of the assessment of the Capital Value.

18. So, the second issue for determination is whether the assessed Capital Value stated in the Commissioner's Valuation Certificate can be upheld at a figure of £260,000. On behalf of the respondent, in the Presentation of Evidence there are four comparables presented in total, in addition to the subject property (these being numbered from No. 2 to No. 5). These are all located within Ballycastle Ward. There is a location map provided and all are stated to be in "close proximity" to the property save for one which is stated to be 0.3 miles from the property.

19. These submitted comparables all are presumed to have unchallenged capital valuations, for that would have been otherwise stated if any such were to be under challenge. In addition to the property, the following, with brief material particulars provided, are stated to be as follows:-

[No.2] 30 North Street, Ballycastle BT54 6BP – privately built pre-1919 semi-detached house (built 1910); GEA 219m², (2.5 storeys); Site Positive: Sea View; external repair: average; stated to be in close proximity to the property and of similar size/age. However this property is semi-detached. The stated Capital Value is £230,000.

[No.3] 32 North Street, Ballycastle BT54 6BP – privately built pre-1919 semi-detached house (built 1910); GEA 221m², (2.5 storeys); outbuilding 11 m²; Site Positive: Sea View; External repair: average; stated to be in close proximity to the property and of similar size/age. However this property is semi-detached. The stated Capital Value is £230,000.

[No.4] 17 Rathlin Road, Ballycastle BT54 6DD – privately built inter-war detached house (built 1930); GEA 241.8m², (2 storeys); outbuilding 8 m²; Site Positive: None; External repair: average; stated to be 0.3 miles from the property and a slightly larger/newer property with no sea view. The stated Capital Value is £260,000.

[No.5] 45 North Street, Ballycastle BT54 6BP – privately pre-1919 detached house (built 1910); GEA 358m², (2 storeys); ancillary 17 m²; garage 45m²; Site Positive: Sea View; External repair: average; stated to be in close proximity to the property and

of similar age with sea view, however significantly larger. The stated Capital Value is £450,000.

20. Having disposed of the “listing issue”, it is the task of the tribunal to assess the case in the light of all of the evidence, taking account of the fact that there is no express objection by the appellant to the correctness of the Capital Value stated in the Commissioner’s Valuation Certificate. The tribunal examined the evidence available from the Presentation of Evidence.
21. Having considered all of the evidence, and whether or not the property was, in broad terms, “in tone”, (and discounting comparable number 5, being 45 North Street, Ballycastle, as having little evidential value), there appears to be evidence available from the comparables of a relatively narrow and specific range of values applicable to properties of approximately the same age and roughly the same habitable space as the subject property. Thus there appears to be a consistency, in necessarily broad terms, between the characteristics of the subject property and the other stated comparables which, of itself, does not suggest that the Capital Value of £260,000 is “out of tone”.
22. As the tribunal has often observed, there is a statutory presumption which is contained within the 1977 Order, at Article 54(3). On account 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, 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 Valuation Tribunal to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the Capital Value to an appropriate figure.
23. 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, the tribunal must consider the fact that the appellant has not put forward any effective

challenge to the respondent's schedule of comparables so as to displace this statutory presumption of correctness.

24. For these reasons the appeal cannot succeed and the appeal is dismissed by the tribunal.

James Leonard

**James Leonard, President
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: 15 November 2021