

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 3-19

MR AND MRS MCKAY- APPELLANTS

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND -
RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Francis J Farrelly Esq

Members:

Ms Noreen Wright (Lay)

and

Timothy Hopkins Esq (Valuer).

Date of hearing: 26th July 2021

DECISION

The unanimous decision of the tribunal is that the Decision of the Commissioner of Valuation for Northern Ireland is upheld, and the appellants appeal is dismissed.

REASONS

Introduction

1. Mr and Mrs McKay live in Sion Mills. They are the owners of 15 Marlborough Terrace, Derry City. The property is a mid-terrace house built in 1910 within the city boundaries. It is a two-storey property with dormer windows front and rear and a front garden and rear yard. The front garden leads onto the public footpath and roadway.
2. By a valuation certificate dated 29 March 2019 a capital value of £75,000 has been placed upon the property. The appellants believe it should not be subject to rates because of its poor condition.
3. They have elected to have their appeal heard by live video presentation. There were no technical difficulties during the hearing. They have taken part from their home. The Commissioner of valuation was represented by Mr Jeffrey Presenting Officer along with Mr O'Brien, valuer, both of whom appeared via video camera.
4. Mr O'Brien has prepared a submission. In it he states he has extensive experience of carrying out valuations. Application had been made on 7 November 2018 by the appellants for the property to be removed from the valuation list because of its condition. The District Valuer accepted the property was in poor repair and reduce the valuation from £85,000 to £75,000 and issued a certificate to this effect dated 11 February 2019.
5. Mr O'Brien visited the property on 14 March 2019. He accepts that the property is in a poor state of repair. The roof was not watertight, and this has led to dampness. As an indication of its condition a polythene sheet had been placed on the roof to try and cover the gaps.
6. He did not advise a change in the valuation and a certificate to this effect was issued on 29 March 2019. The appellant's appealed, leading to the present proceedings.

The arguments

7. The owners intend renovating and renting out the property to multiple occupants. They have been granted permission to convert into multiple occupancy. The proposed works include replacement of the roof and windows as well as demolition of the existing rear return and replacement with a larger structure.

8. The submission on behalf of the Commissioner for valuation refers to 4 other properties in the terrace used as comparators. All are 2 ½ story high and featuring dormer windows. The habitable space varies from 118 m² to 124 m². The comparators are described as being in an average state of repair. Their valuations vary from a low of £85,000 up to £100,000. The appellant's property has a habitable space of 135.45 m².
9. The first appellant, Mr Brian McKay, is a director of a limited company by the name of BMK Contracts Ltd. The company is engaged in building work. He provided a letter as an attachment with an email dated 22 September 2020. He indicates the property require substantial renovation work, including demolition and rebuilding of the main walls and floors and the installation of a new roof. He states he paid £34,000 for the property which reflected its poor state of repair and said effectively he was purchasing a site. He estimates the cost of the proposed works will be in the region of £100-£150,000.
10. Land and Property Services responded in an email dated 14 October 2020. This suggests that the fact the first appellant has indicated an intention to carry out works demonstrate that the property is not derelict and incapable of repair. Reference is made to the planning application and the intention to replace the windows and rear return and dormer windows which indicates the works will be by way of repair and renovation rather than complete demolition of the property.
11. At hearing, Mr McKay told us he purchased the property in 2016. He was aware the property was in poor condition and had been boarded up to reduce vandalism. His application for planning permission to convert to houses in multiple occupancy took 3 years. He made the point that if the premises realistically could have been repaired, he would have done so earlier and been receiving a rent. However, he said the floors on each level were unsafe and the works were major. He maintained the property was beyond repair.
12. In response, Mr Jeffrey pointed out there had been no structural engineers report submitted to show the property was structurally unsound. On questioning, Mr O'Brien's inspection had been limited as he did not go to the top floor of the property. He was also unsure as to what the proposals were in respect of the return to the property.

The law.

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

14. The statutory provisions are to be found in the 1977 Order as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). Article 54 of the 1977 Order enables a person who is dissatisfied with the Commissioner's valuation as to capital value to appeal to this tribunal.
15. There is a statutory presumption in Article 54(3) of the 1977 Order that on appeal a valuation in the valuation list shall be deemed to be correct until the contrary is shown. It is therefore up to the appellant in any case to challenge and to displace that presumption, or perhaps for the Commissioner's decision to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.
16. The valuation is based on the factors contained in article 7(1) of the 1977 Order. The capital value is the amount which the property might make if sold on the open market by a willing seller on the relevant capital valuation date. Regard is to be had to the values in the valuation list of comparable properties in the same state and circumstance. In settling the valuation, several assumptions are to be made. It is assumed the property is in an average state of internal repair and fit out.
17. The appellant's argument is that the property is structurally unsound and major works would be required before it could be occupied. Because of this they feel it should be excluded from the rateable valuation list. The respondent accepts the property is in a poor state of repair and does need works before it can be occupied. However, they do not accept it is derelict and concluded it should remain in the valuation list.
18. The decision of the Wilson and Coll [2011] EWHC 2824 (Admin) concerned a semi-detached house built in the 1930s which had been vacant since 2007 and had fallen into disrepair. It remained in the valuation list throughout. The challenge was whether it should remain in the list because of its condition as opposed to any reduction in valuation. The respondent had argued that the issue was not the economics of the repair but whether there was a need for a complete reconstruction or replacement of the dwelling. His Lordship emphasised the distinction between the existence of a hereditament and the valuation of the hereditament. At paragraph 40 His Lordship said whether a property continues to be hereditament should focus upon whether it is capable of being rendered suitable for occupation by a reasonable amount of repair work. A distinction was made between a truly derelict property incapable of being repaired and one that was. His Lordship went on to say given the statutory rating scheme the issue was not whether the repairs would be economic.
19. In the present appeal we accept the property is in a very poor state of repair. We have seen the external photographs and the internal details. It seems

likely that the roof will have to be replaced and the joists and so forth. It also seems likely there will be other significant works required such as replacement of windows and woodwork and installing a proper damp proof course. Undoubtedly, repairs to the floors and joists seem likely. The poor state of repair of the property was reflected in its purchase price.

20. Whilst we acknowledge the poor condition of the property, we find the appellant have not demonstrated that it is truly derelict and incapable of being repaired. We have not been provided with a structural report to indicate all the supporting walls will have to be removed to render it essentially a site only. The appellants have indicated they intend carrying out works to satisfy the requirements for a house in multiple occupancy. The cost of doing so is likely to be considerably more than if the plan was for a single domestic building. For instance, house in multiple occupancy would require special fireproofing measures on the floors and doors. The appellant has indicated an intention to demolish the return. However, in our view such an intention is more consistent with need for additional space in a house in multiple occupancy. In summary, our conclusion is that notwithstanding the properties poor condition it remains to be considered as a hereditament. We do not find it has been shown by the appellants that it is in such a derelict state that it should be removed from the valuation list.
21. The thrust of the appeal has been that the property should not be in the valuation list rather than a challenge to the valuation placed upon it. We find the comparators provided by the respondent can be relied upon and do not find the statutory presumption rebutted.

**Signed: Mr Francis J Farrelly, Legal Chairman
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to the parties: 27 September 2021