**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: 42/21**

**CATHAL MCGOVERN APPELLANT**

**AND**

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

**Northern Ireland Valuation Tribunal**

**Chairman: Mr Charles O'Neill**

**Members: Mr Christopher Kenton FRICS**

**Date of hearing: 21 June 2022, Belfast**

**DECISION**

The unanimous decision of the tribunal is that the subject property is properly included in the valuation list and that the Appellant's appeal is dismissed.

**REASONS**

**Introduction**

1. This is (subject to the observations made below) a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order"). This matter was listed for hearing on 21 June 2022.

2. Unfortunately, the lay member who was due to attend this hearing was unable to attend on the day due to illness. In accordance with Rule 4 of the Valuation Tribunal Rules (NI) 2007 hearings may be considered and determined by the Legal and the Valuation Member sitting together without a lay member with the consent of the parties. Both the Appellant and the Respondent confirmed that they were content to the matter proceeding on this basis.

3. The hearing proceeded by way of a hybrid hearing in which the Legal Member of the Tribunal and the Appellant and his wife (and the tribunal clerk) were present in the tribunal room and the Valuation Member appeared by video link. The respondent was represented by Mr Jeffrey and Ms Graham who appeared by video link.

4. The hearing was conducted in accordance with the Northern Ireland Valuation Tribunal Remote Hearing Protocol dated 24 September 2020. All parties were content to proceed on this basis.

5. This appeal is in respect of the valuation of a property situated at 98 Sandhurst Drive, Belfast, BT9 5AZ (the subject property).

**The Law**

6. 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.

7. An issue in this case arises in relation to the listing of the property as a hereditament in the capital value list. Article 2(2) of the 1977 Order states ;*hereditament" means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in a valuation list".*

8. Reference will be made later in this decision to the relevant case law to which the tribunal was referred by the parties.

**The Evidence**

9. The tribunal heard oral evidence. The tribunal had before it the following documents:
   a. The Commissioner's Decision issued on 12 May 2021;
   b. The appellant's notice of appeal received by the tribunal office on 10 December 2021;
   c. Notice of extension of time dated 1 February 2022;
   d. A document entitled Presentation of Evidence dated 14 March 2022, prepared on behalf of the respondent by Marianne Graham, MRICS and submitted to the tribunal for the purposes of the hearing;
   e. Correspondence between the parties and the tribunal office.

**The facts**

10. The subject property is a privately built inter-war semi-detached house. It has habitable space of 77m2. The capital value has been assessed at £195,000.

11. By way of background, as outlined in the Presentation of Evidence, an application was received on 11 November 2010 to revalue the property. A decision of no change was issued on 10 February 2011. On 17 February 2021 the District Valuer received an application from the Appellant standing that the subject property was derelict or demolished. It was determined that the property should remain in the valuation list and a decision of no change was issued on 14 April 2021. This decision was appealed to the Commissioner of Valuation and it was determined that the property should remain in the valuation list. This was issued on 12 May 2021. This decision was appealed to this tribunal.

**The appellant's submissions**

12. The Appellant indicated in his notice of appeal that the subject property is uninhabitable. The floors and ceilings are gutted out. Planning permission has

been sought and granted for conversion of roof space, dormer window to rear and front velux windows. It has always been his intention to renovate completely the home due to the derelict condition of this house, however previous planning applications were turned down due to the extent of such. Now planning has been obtained.

13. The Appellant further clarified at the hearing of the matter that the subject property has been subject to a leaking roof in 2014. It had been tenanted at the time and the tenant complained of a leaking roof to the bathroom. In the light of this, when the roof was inspected it was decided that the whole roof needed to be replaced as it was not watertight. The Appellant wanted at the same time to do some other works to the property in the form of an extension to the property and it was decided to do all the works at the same time. The Appellant removed the kitchen and bathroom and in effect commenced the works in anticipation that planning permission would be forthcoming. In fact, it was not forthcoming and was turned down as was an application in 2016. As a result, the building works stopped.

14. The Appellant confirmed that plans have now been approved and at the hearing of the matter provided a building control notice of approval dated 9 February 2022 for the subject property. The detail on the certificate states “Loft conversion to habitable use. Internal alterations to include: relocation of GF WC all and door opening, removal of GF living room, bedroom and kitchen walls to form open plan kitchen, dining and living room. Reconfiguration of 1st floor bathroom.”

15. The Appellant stated that he intends to do the works to the subject property.

**The respondent’s submissions**

16. On behalf of the Respondent, it was indicated that the subject property had been inspected on 6 May 2021. The Respondent found that some ceilings and floors had been stripped out or removed. The kitchen and bathroom had been removed. The Respondent is of the view that, although unoccupied the property could be made habitable with a reasonable amount of repair works. The Appellant had indicated that he intended to do a programme of works to the subject property.

17. The Respondent found that the subject property appears to be watertight and is structurally intact.

18. The respondent is of the view that notwithstanding these comments about the property condition both externally and internally for rating purposes he 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.

19. In relation to the capital value of the subject property, reference was made to a list of comparable evidence stated to be in the same state and circumstance as the subject property. details of these comparables were set out in an Appendix to the Presentation of Evidence with further particulars of same, including photographs. These were all capital value assessments, details of which are as follows:

    84 Sandhurst Drive, Belfast, which is a privately built inter-war semi-detached house with habitable space of 77m2. It has a capital valuation of £195,000.

    86 Sandhurst Drive, Belfast, which is a privately built inter-war semi-detached house with habitable space of 77m2. It has a capital valuation of £195,000.

    92 Sandhurst Drive, Belfast, which is a privately built inter-war semi-detached house with habitable space of 77m2 and an outbuilding of 5m2. It has a capital valuation of £195,000.

    94 Sandhurst Drive, Belfast, which is a privately built inter-war semi-detached house with habitable space of 87m2. It has a capital valuation of £210,000.

**The Tribunal's Decision**

20. 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**

21. 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?".

22. 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).

23. 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:

    *"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?*

*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.*

*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?*

*"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."*

24. 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."*

25. 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.

26. 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.*

27. For these reasons, each case must be adjudged specific to its own facts.

28. The appellant has stated that the property is not watertight and has indicated that there are several issues with the property in that it is not watertight and it is not habitable. As against this the Respondent contends that the subject property is a hereditament in that with a reasonable amount of repair works it could be made habitable.

29. The tribunal has to take the broadest common-sense view of the factual matters in the application of the law and to view things in the round. Applying this approach to this case and weighing up the various arguments advanced and the various considerations which are material to the determination, the tribunal's decision unanimously is that the subject property in the same state and condition as stated in the evidence properly falls to be included in the rating list as a hereditament. The Appellant's appeal on this point fails accordingly.

30. Having concluded on this point it falls to consider the capital valuation of the subject property. The Appellant was asked if he had any comments on the capital valuation of the property and in particular on the comparables used by the Respondent in arriving at the capital valuation. The Appellant indicated that he had no issue with the comparable evidence but his issue was whether the property should have been included in the rating list.

31. The tribunal is satisfied with the comparables used by the Respondent to arrive at the capital valuation. These are all comparables close to the subject property. 84, 86 and 92 Sandhurst Drive are in the same state and circumstance and are the same size as the subject property. They all have capital valuations of £195,000. Therefore, the tribunal is satisfied that the Appellant's appeal is dismissed and the Commissioner's decision is upheld.

**Chairman: Mr Charles O'Neill**
**Northern Ireland Valuation Tribunal**
**Date decision recorded in register and issued to the parties: 09/11/2022**