



SJ (03-10-2022): The question of whether these apartments should be included in the Valuation List has been considered previously in 8061272-1 and 8045679-1.

While it is accepted that there is a structural issue, props have been installed to stabilise the structure until such times as remedial works can be completed (liability is subject to a protracted legal dispute).

There is no evidence at this stage that suggests the apartments are incapable of being repaired or that such a programme of works could be considered unreasonable. Therefore the properties must remain in the Valuation List.

REPORT TO THE COMMISSIONER OF VALUATION

PROPERTY ID	956902 and 956705
CASE REGISTRATION NUMBER	8072085 1 and 8072086 1
APPELLANT	[REDACTED]
ADDRESS	956705 APARTMENT 1004 959902 APARTMENT 705
DESCRIPTION	Apartments 7 th floor and 10 th floor
CAPITAL VALUE	£150,000 and £190,000
ACTION AT CR	No change to valuation(s) Properties remained in the Valuation List.
INSPECTION DATE	External inspection 29 th September 2022 Requested internal inspection, internal access not possible due to lack of insurance cover and concerns over Health and Safety.
INTERVIEWED	[REDACTED] via telephone and email sent



PROPERTY DESCRIPTION AND BACKGROUND

These appeal cases relate to the high profile, ongoing issue(s) at the apartments in Victoria Square, Belfast in which residents were ordered to vacate in April 2019 due to concerns over Health and Safety.

The appellant seeks to have these removed from the Valuation List as per reasons below.

APPELLANT'S GROUNDS OF APPEAL

Please state **reason(s)** for objecting to the valuation stated on the District Valuer's Certificate

1. THESE PREMISES OUGHT NOT TO BE INCLUDED IN THE RATING LIST. THE ORIGINAL HEREDITAMENT NO LONGER EXISTS. THE APARTMENT IS IN THE VICTORIA SQUARE RESIDENTIAL TOWER AND (CANNOT BE OCCUPIED FOR THE PURPOSE FOR WHICH IT WAS INTENDED, VIZ. A DWELLING.
2. ON 10TH APRIL 2019 WE WERE ADVISED BY THE MANAGEMENT COMPANY TO VACATE THE PREMISES IMMEDIATELY BECAUSE THE BUILDING WAS UNSAFE, FOLLOWING THE COLLAPSE OF A STRUCTURAL COLUMN (WHICH IS NOW BEING TEMPORARILY SUPPORTED BY STEEL PROPPING).
3. IT HAS SINCE BEEN CONFIRMED BY STRUCTURAL ENGINEERS THAT THE BUILDING IS STRUCTURALLY UNSAFE BY REASON OF FUNDAMENTAL DEFICIENCIES IN ITS DESIGN AND IN ITS CONSTRUCTION, BOTH IN TERMS OF WORKMANSHIP AND MATERIALS. IT REQUIRES RECONSTRUCTION OR REPLACEMENT, RATHER THAN MERE REPAIR. FURTHER, THIS IS WORK THAT IS BEYOND MY LEGAL POWER TO DECIDE UPON OR CONTROL SINCE IT WOULD CONCERN COMMON PARTS OF A BUILDING LEASED TO AND MANAGED BY A MANAGEMENT COMPANY IN WHICH I AM ONLY ONE SHAREHOLDER.
4. AS A RESULT THE APARTMENT CANNOT BE OCCUPIED, HAS NO MARKET VALUE AND, BY ANY REASONABLE TEST, OUGHT NOT TO BE INCLUDED IN THE RATING LIST.
5. EVIDENCE OF THESE MATTERS WILL BE SUPPLIED IN DUE COURSE. FINAL EXPERT REPORTS ARE STILL AWAITED FOLLOWING FORENSIC TESTS.
6. RELIANCE WILL BE PLACED ON WILSON V COLL (2011) EWHC 2824 ADMIN, WHITEHEAD V COMMISSIONER OF VALUATION NIVT 12/12 AND SUBSEQUENT RELATED AUTHORITIES IN THE NIVT.

There are three ways in which rates would not be liable on the above these include

- 1) The property is removed from the Valuation List i.e. no longer considered a hereditament

- 2) The Capital Value is below £20,000
- 3) Exclusion from vacant rating is applicable.

The first question given the information provided are the subject(s) considered hereditaments

A hereditament this means a property which is or may be liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list.

This case is not a challenge on valuation. The applicant wants these removed from the Valuation List and no longer considered hereditaments

I did request an inspection this was not possible due to H&S concerns and issues with insurance coverage.

The Commission of Valuation has made no change in other appeal cases in relation to the issues at Victoria Square apartments.

8061272-1
8045679-1

I have read both the reports attached to the cases and noted the evidence of structural damage, reports and photographs.

An external inspection was conducted Sep 2022. There has been no obvious change, a safety net has been added assuming to potentially capture any possible spiralling bricks as reported in case 8045679-1.

There is no ongoing works to the apartments this is due to a pending and ongoing legal case to determine who is liable to sort the issues that prevent occupation.



External inspection, safety net in place.

A useful case was in determining the hereditament

<https://www.judiciaryni.uk/sites/judiciary/files/decisions/12-12%20Whitehead.pdf>

The listing issue

*In relation to the listing issue the tribunal has considered recent judgments of the Northern Ireland Valuation Tribunal in *Whitehead v Commissioner of Valuation and in McGivern v Commissioner of Valuation*. 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?

Does the nature of the works needed in this case amount to reasonable?

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 these 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”.

The Wilson V Coll case determined that costs and economics did not come in to play when considering the repairs.

Are the repair works reasonable in this case?

Clearly it would be reasonable for person to install a new roof on their dwelling.

Key phrase from states from Whitehead case is highlighted below.

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 this case it could be argued that these are not normal and usual circumstances

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.

Reasons that this is not normal and goes beyond reasonable.

- This relates to major and complex structure issues ultimately beyond control of the applicant.
- The issues extend to the wider building and are much broader than the hereditament in question. The rateable occupier of the hereditament (in this case an apartment) could not repair this or make safe without altering or repairing the entire building, thus potentially putting the issue of being able to repair beyond the control of any hypothetical tenant or occupier of the hereditament in question.
- An inspection has not been possible. The apartments have been deemed unsafe to enter (although this in its own right does make it not a hereditament)
- There are ongoing legal issues and a multi-million-pound legal case which relate to find the extent of the repairs required and who is liable for such repairs
- There is a possibility that complete reconstruction might be required although this has not been confirmed, at this stage until the final reports are finalised and legal case settled, we don't know how severe the damage is.

All of the above support my view that repair of the hereditament is beyond the element of reasonable at this stage.

The difficulty faced by any tribunal is how to apply the decision as to what might be deemed a “reasonable amount of repair works”, for trite to say that, self-evidently, any property must not be included in the rating list which required an “unreasonable” amount of repair works.



*In disapplying any “economic test” (as per Wilson v Coll), the logicity is that what is purely physically possible must, upon that argument, be the focus of the tribunal. However, that of itself might lead to an unrealistic and indeed irrational and unreasonable view of things - **for anything might be repaired and reinstated**, if one were acting outside the limits of reason.*

*In relation to the facts of this case as in any case of this nature the question to be considered by the tribunal is “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”.*

*However, the tribunal prefers the evidence of the respondent that the fabric of the building **is intact**. It also finds that while it is clear that repairs and improvements are required, if a **reasonable** amount of repair works were carried out the property could be occupied as a dwelling.*

Are repairs reasonable in this case.

Other useful recent cases

Council Tax Valuation Appeal; flat above a public house; fire damaged and incapable of occupation; hereditament test; Wilson v Coll (LO) [2011] appeal allowed

<https://appealsearch.valuationtribunal.gov.uk/Home/Download?ApAppealNumber=M082607619>

Fire flat damaged was no longer considered a hereditament

41. The appellant argued that the amount of repair works that were involved in reinstating the dwelling went far beyond the term “reasonable” when one looks at the expression used by Mr Justice Singh in paragraph 40 of his judgment. Having seen the physical state that the property was left in following the fire, I found the appellant’s argument compelling. 42. In theory, if you had enough money to throw at a project, it could be argued that anything was repairable.

However, I note that in paragraph 40 of his judgment, Mr Justice Singh states that, in deciding whether or not a property continues to exist as a dwelling, there is a need to focus on whether it can be rendered capable of occupation by undertaking a reasonable amount of repairs. This judicial view, correctly interpreted, suggests that the test is not, how the Listing Officer has applied it in this case, can it be repaired whatever the cost?

*Since it does not matter if it is not economic for the owner to effect repairs but whether it is **reasonable to expect**, given the amount of work involved, that the repairs would be undertaken in the first place?*

It comes down to the question of what is reasonable.



Decisions of the High Court

Dawn Bunyan (LO) v Laxmi Patel [2022] EWHC 1143 (admin)

The appeal property is a three-bedroom semi-detached house, occupied until 27 August 2019 when the tenants were evicted. The owner of the property had sought a deletion of the valuation list entry with effect from 28 August 2019 on the basis that it was uninhabitable because of rising damp caused by weather penetration. In support of the proposed deletion, the owner provided a copy of a survey report provided by Rentokil which confirmed the existence of rising damp and fungi. The cost estimate for the remedial works was just over £5,000.

The remedial works eventually commenced on 23 September 2020 and once the works began it became evident that the damp issues were worse than envisaged. The plasterwork in the kitchen was contaminated, so the units needed to be removed and the plaster replaced with specialist rendering. Other works involved included the replacement of ceilings, floors, skirting boards and stripping the bathroom fittings. This increased the costs of the works by just under £27,000.

As there was an ongoing programme of works with parts of the property stripped back to bare brick, the respondent agreed to delete the list entry with effect from 23 September 2020, the date when the works commenced. However, the owner pursued her appeal to the VTE and a Vice President found that the property was incapable of beneficial occupation on the relevant date 28 August 2019.



In his decision, the Vice President had more regard to an earlier VTE decision made by the President in *Tewari v Virk (LO)* [2020] M0826076 than the High Court's judgment in *Wilson v Coll* [2011] EWHC 2824 (admin). Having reviewed the President's decision, Mrs Justice Lang acknowledged that *Tewari* was correctly decided and was based on a proper understanding of the Supreme Court's judgment in *Newbiggin v Monk* and the High Court's judgment in *Wilson*. She

was, however, concerned with paragraphs 32 and 34 of the President's decision which were endorsed by the Vice President. The President had observed that the council tax legislation had changed since 2011, following the abolition of Class A of the Council Tax (Exempt Dwellings) Order 1992. The President had noted that Listing Officers had taken an overly robust approach in refusing requests for deletion on the basis that any dwelling could be repaired without giving consideration to whether it would be reasonable for the owner to do so.

Mrs Justice Lang upheld the respondent Counsel's argument that the President's observations were based on a mis-reading of *Wilson* and as Class A played no part in Mr Justice Singh's analysis in *Wilson*, the Vice President should have followed it as the *Wilson* judgment was binding on the VTE. Instead he applied a less stringent test namely whether the property required major works to remedy the problems and make it fit for occupation as a dwelling. Had the VTE followed *Wilson* in the Patel case it may well have arrived at a different decision based on the facts.

In allowing the Listing Officer's appeal, Mrs Justice Lang also endorsed the contents of the Listing Officer's Council Tax Manual and remitted the case back to the VTE for re-consideration by a differently constituted panel.

Read the full decision [here](#)

<https://www.bailii.org/ew/cases/EWHC/Admin/2022/1143.html>

Recommendation(s)

I have read the previous appeal reports, looked at photographs, structural report, and information from the applicant.

After thoughts and some deliberation. I have concluded that in my opinion, it fails the hereditament test.

I deem the ability to conduct repairs in this case to be beyond the element of being reasonable as per reasons outlined earlier in the report.

In my opinion List removal is appropriate and recommended.

Following a discussion with Senior Valuer, the current approach is that these however will remain in the Valuation List. I accept this view and opinion.

This decision is now likely to appealed proceed to the Northern Ireland Valuation Tribunal.(NIVT)

It should also be noted in this report that the applicant wanted to us postpone closing these cases (see email), it was concluded that the best approach was to close with no change and for the case if required be heard at NIVT.

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COMMISSIONERS COMMENTS

VALUER	I confirm that I have no conflict of interest in dealing with this Appeal.
DATE	3/10/2022

APPENDICES

MEDIA REPORTS BACKGROUND INFORMATION AND PHOTOGRAPHS

<https://www.bbc.co.uk/news/uk-northern-ireland-47886829> Initial article **April 2019**

Victoria Square residents told to vacate Belfast apartments



Residents of the apartments in Belfast on Chichester Street have been directed to vacate the building

Residents of apartments at the Victoria Square complex in Belfast have been told to vacate the building "immediately for safety reasons".

A letter from McGuinness Fleck, which residents received on Wednesday, said work was being done to resolve a "serious structural issue".

A spokesman said the repair would take 20 weeks to complete.

A lawyer for the Victoria Square Residential Management Company Ltd said the decision was not "taken lightly".

██████████ of Johns Elliot Solicitors which represents the Victoria Square Residential Management Company Ltd, said that since "a structural issue was

initially identified in February, there has been a process of detailed structural assessments of the building".

He added the decision to evacuate the building "was done at direction of structural engineers as a safety precaution".

BBC News NI contacted a number of restaurants in the Victoria Square shopping complex, but they said they were unaware of the evacuation plans and had not been affected.

It is understood there is no indication of damage to the shopping centre. In its letter, McGuinness Fleck estate agency said that further to its letter of 1 February, 2019, the management company had been working to "resolve a serious structural issue within the building that required the evacuation of a number of apartment occupiers along a damaged structural column".



SOURCE, GOOGLE MAPS

It said the situation has been monitored closely and the management company has been making efforts to have the damage repaired "as soon as possible".

It added that "due to the risk of further structural movement within the building, the structural engineers engaged by the management company have today directed that ALL apartments must vacate the building immediately for safety reasons".

The letter adds: "It will be necessary for you to seek alternative accommodation until the situation is resolved.

"We appreciate this will cause great inconvenience but the matter is beyond the control of the management company.

'Great inconvenience'

"Please keep us informed about your arrangements for alternative accommodation so we may keep you properly updated".

McGuinness Fleck also said in the letter that "it may be the case that any alternative costs you incur until this matter is resolved may be recoverable from the parties ultimately deemed responsible for the structural damage".

It said the management company is "not in a position to give any assurances about costs at this point in time".

"Please be assured the management company is working to resolve this matter as quickly as possible", the letter ends.

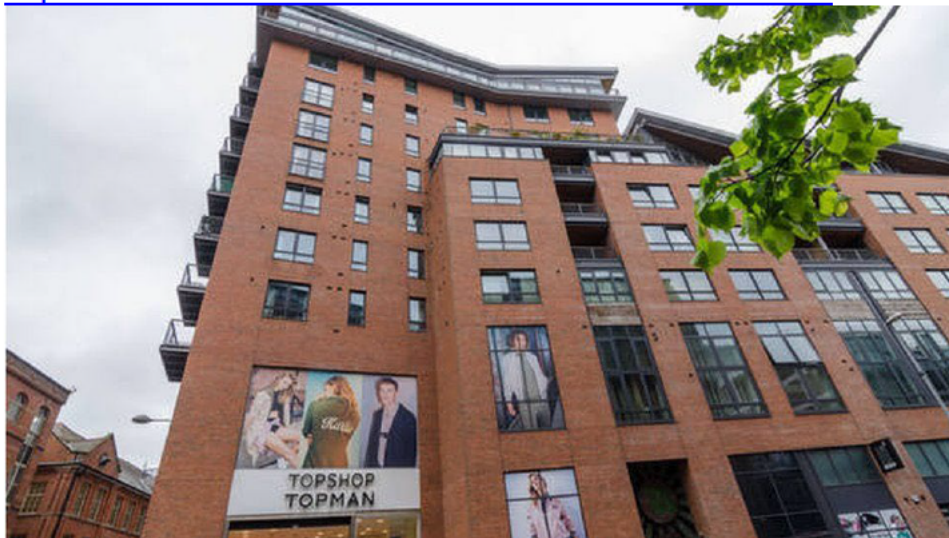
██████████ added: "Engineers have been inspecting the building in coordination with the landlord for Victoria Square Shopping Centre.

"A programme of repair work will now need to be done which is being arranged at the moment.

"A timescale of 20 weeks is what we are currently expecting."

Belfast's Victoria Square Apartments damage 'worse than expected'

<https://www.bbc.co.uk/news/uk-northern-ireland-49772639>



Residents of the apartments in Belfast on Chichester Street were advised to vacate the building in April

Homeowners at Victoria Square Apartments in Belfast are expected to be told that damage to the building could be worse than first thought.

BBC News NI understands stakeholders have been called to a meeting next week. In April, **residents were told to vacate the building** "immediately for safety reasons".

A letter at the time from estate agency McGuinness Fleck said work was needed to resolve a serious structural issue.



'Shopping centre not affected'

A spokesperson said it would take 20 weeks to complete, but that time has already passed and the majority of residents are still living elsewhere.

Media caption,

Dundalk man, [REDACTED], was among residents at Belfast's Victoria Square apartment complex that were told to vacate the building

There are 91 apartments in the residential development in Chichester Street.

Victoria Square Residential Management Limited maintains the flats.

The commercial section of the building is run by Victoria Square Shopping Centre.

In a statement it said: "Victoria Square Shopping Centre is aware that remedial work is underway on Victoria Square Apartments.

"In light of the issues identified in the apartment block, a structural assessment of the shopping centre was carried out.

"Based on this assessment, Victoria Square Shopping Centre is not affected and continues to trade as normal.

"We continue to monitor the situation as the safety of our customers and employees remains our highest priority."

Victoria Square shopping centre opened in 2008, increasing the amount of shops in the city by one third.

Legal action started over ‘worthless’ Victoria Square apartments

Legal proceedings have been started to determine the future of the apartments above the Victoria Square shopping complex.

By The Newsroom

Thursday, 26th September 2019, 6:49 pm



All 91 apartments above Victoria Square shopping centre have been empty since April

Seventeen apartments were evacuated in February when structural issues became evident in some properties.

Following initial remedial work and after further inspections from structural engineers it was recommended in April that all 91 apartments be vacated.

The management company – Victoria Square Residential Management Limited – said work to fit steel props to a damaged structural column was completed in August at a “significant” cost to shareholders.

However, further structural issues were brought to light in a structural assessment report and apartment owners were told on Wednesday night that legal proceedings are under way to determine how to move forward.

The owner of one of the apartments, who did not wish to be named, said: “Residents are being told everything’s got to be moved out, we cannot live there. I own the property there and in its current state it’s worthless.

“Right below the tower is the entrance to Top Shop. Right underneath the tower are the centre’s car parks and the depot for deliveries for everything within the centre.

“If the apartment block is unsafe, how on earth is Chichester Street and Montgomery Street safe for pedestrians?”

The management company said: “A structural assessment report has now been completed and its content was discussed with the management company shareholders. Those present at the meeting consisted of the shareholders and the professional consultants engaged on behalf of the management company.

“The report indicates there are further structural issues to be addressed within the building but the management company is not in a position to elaborate any further on the content of the report. The matter must now be taken further through legal proceedings.

“This is an extremely difficult position for the management company shareholders who have not been able to reside in their apartments since April due to the relevant structural issues.

“The management company has to date and continues to liaise with the owner of the neighbouring commercial premises at Victoria Square.

“The management company has not carried out a structural assessment of the commercial shopping centre and is therefore not in a position to comment on any matters relating to that part of the building which comprise the shopping centre premises.”

Victoria Square Shopping Centre issued a statement last week to say that it is not affected by the issues in the apartment block. Its position remains the same following Wednesday’s developments.

The centre said: “In light of the issues identified in the apartment block, a structural assessment of the shopping centre was carried out.

“Based on this assessment, Victoria Square Shopping Centre is not affected and continues to trade as normal.”

It added: “We continue to monitor the situation as the safety of our customers and employees remains our highest priority.”

Victoria Square apartment block images of structural damage emerge

Legal sources say shopping centre was asked to help with repair bill

17:24, 17 APR 2019



Victoria Square apartments in Belfast City Centre (Image: Jonathan Porter/PressEye)

Representatives of a Belfast apartment block evacuated amid safety concerns about a structural column have approached owners of the adjoining shopping centre about sharing the costs of repairs.

With the bill for fixing [the problem at the Victoria Square complex](#) estimated to reach up to £1million, an informed source said the proposal was knocked back.

Photos have also emerged of the first signs of the damage - when steel reinforcement broke through the wall of one apartment two and a half months ago. Last week residents in the complex were told to leave their homes immediately for safety reasons.

At the time lawyers for the Victoria Square Residential Management Company Ltd said the decision was based on assessments of the building carried out after the structural issue was initially identified. The obtained images appear to show the steel reinforcement of a supporting column coming through the wall of a fourth floor apartment back in February.

Repair work is expected to take around 20 weeks, with costs running into hundreds of thousands of pounds. Apartment owners who are shareholders in the management company have been asked to make contributions towards that bill. Those costs may be recoverable at a later stage if any legal liability is established for negligence, for example, or breach of contract.



An image purporting to show steel rods within the fabric of the Victoria Square apartment block

No damage has been identified in the adjoining Victoria Square shopping centre, where business is continuing as normal. But a source close to the situation has revealed details of an approach made at the end of February.

Representatives of the residents' management company proposed that repair costs should be shared between it and the owners of the shopping centre in the event of other parties failing to cover the bill. In response to that suggestion, however, it was stressed that the failure had occurred within the residential premises.



Another image of steelwork within the Victoria Square apartment block
According to the source the cost-sharing proposal was turned down on that basis.



Homeowners at Victoria Square apartment block evacuated amid safety concerns set to claim up to £25 million in total damages



Residents of apartments at the Victoria Square complex in Belfast were told to vacate the building. Picture by Mal McCann

19 August, 2021 01:00



Homeowners at a Belfast apartment block evacuated amid safety concerns are set to claim up to £25 million in total damages.

A group action is being taken over structural issues at the city centre Victoria Square complex.

The owners of more than 80 of the 91 apartments are due to lodge detailed legal papers at the High Court by the end of the month.

A source familiar with the case said: "We are talking about a total group claim of between £20m and £25m."

In April 2019 residents were told to vacate the flats located on Chichester Street for safety reasons.

The move followed an assessment of a structural column on a corner of the building.

Statements of claim are now expected to allege breach of contract, negligence and lost rental earnings.

The scale of the lawsuit was confirmed as separate concerns were raised over part of the building's facade.

It is understood that discussions have taken place about any potential spalling of bricks on the exterior.

Although apartment residents have left, traders in the adjoining Victoria Square shopping centre are still operating as normal.



Land & Property Services
Seirbhísí Talún agus Maoine