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: 27/22

BRIAN CAMPBELL – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr C Kenton FRICS and Mrs N Wright

DECISION ON REVIEW

The unanimous decision of the tribunal is that there are no proper grounds made out by the appellant to enable the tribunal to review the decision of the tribunal promulgated on 2 June 2023 and thus the tribunal's decision is affirmed and the appellant's application for review is dismissed.

REASONS

Introduction

1. This matter relates to an application for a review of the tribunal's decision ("the decision") in respect of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The decision was issued to the parties by the Secretary of the Northern Ireland Valuation Tribunal ("the Secretary") on 2 June 2023. The Secretary received on 15 June 2023 an emailed letter from the appellant dated 12 June 2023 ("the review request") which was taken to constitute a request to the tribunal to review the decision under the statutory power in that regard. The appellant raised issues that shall be referred to further below. The relevant part of the review request setting out grounds upon which a review has been sought reads as follows:-

   " It appears to me now, although it was not totally obvious to me at the time, that the decision hinged on the new comparable list which LPS provided, and the outcome no matter how valid my representations or evidence was all came back to the new comparable properties.

   The new comparables were discussed at the tribunal and in fact I recall one of the panel members challenging the LPS representatives on the make up of same, why they had been selected, the fact that they were all different houses, in different locations, save one property that was used in the 2009 valuation process.

   I did not understand the significance of these properties to the overall outcome and I would have expected some guidance for myself to bring forward a more robust challenge to same.

   I did however comment that the new comparables were totally different, in different locations and I believed were brought in to support LPS valuation. I made the point that I have no knowledge of these houses save No31, nor any knowledge of their rating valuation history or how their valuations were arrived at, therefore how could I realistically be expected to have mounted the best possible challenge without such knowledge.

   For the avoidance of doubt, I totally object to these new properties being introduced as part of the LPS valuation process. The valuations should have been based on the original comparables list used in 2009 valuation for the reasons set out below.

   As you are aware the property was subject to a full and detailed valuation by LPS in 2009 and the comparibles used were all located in the same development. Similar house type but with some variations, however these variations were clearly known and it is relatively easy to compare same, therefore to use these properties would give the most accurate and fair representation of values.

   I strongly believe that the same properties used in 2009 should have been used in this more recent valuation review.

Why did LPS not use the original comparable list ? I believe LPS knew that the original comparable would not support their new valuation. This should now be tested.

To bring in new Comparibles should have only been done and can only justified if and when a general rating revaluation for NI is rolled out, otherwise I believe I am being treated unfairly and same is not referenced back to the 2005 valuation base.

I am being disadvantaged because as I am not in a position to challenge the new comparibles list, save the one property which is common to both lists ie No 31 Marlborough Heights, In the case of No 31, As stated I am familiar with this house, the layout, the size, the planning and valuation history. The others properties I have no ability to ascertain the planning history, the LPS valuation History, nor do I have a knowledge of these properties. So how could I be expected to mount a robust challenge in this critical aspect of the case and certainly in on the hoof at the tribunal.

I'm not sure if the Tribual's questioning of LPS representatives on the new comparibles was mean't to be a prompt for me to make a greater challenge at the time, however, for the reasons stated how could I be expected to give a more robust challenge. I cannot be expected to have such knowledge or access to same and therefore the process seems to have been weighted against me.

This outcome if it stands drives a coach and horses through the 2009 valuation and essentially says it was wrong some 14 years later. Moreover, how could anyone have confidence in the accuracy and fairness of LPS valuations, when looking at my property alone they made an initial error in overstating the size of the property, which then lead to the 2009 detailed revaluation and now this ruling essentially says the LPS 2009 valuation was wrong.

At the tribunal the LPS representative mentioned another property no 7 Marlborough Heights which had a Capital Value of £285k and the LPS representative stated my house was larger. Can I say £285k on No 7 is an outlier within the development and I believe this property is overvalued by LPS.

Finally, I believe I clearly set out to the tribunal supported by the evidence provided, that the increased valuation is unreasonable, disproportionate and unfair. It failed the reasonable test however this has not been taken into consideration.

I trust the Tribunal will review its decision for the reasons set out above, and I look forward to hearing from you in due course."

The review request was followed by subsequent communications from the appellant seeking to put forward additional submissions including schedules of additional properties, together with an analysis of factors which the appellant considered relevant to the matter, including one sent by email on the evening before the date of the listed hearing. It is evident to the tribunal that the appellant has devoted considerable industry to that task.

2. The review request was copied to the respondent and the respondent thereby was duly notified of the appellant's request for a review and it was indicated that the respondent did not wish to make any responding submissions.

3. A hearing of the review application was arranged and duly proceeded on 27 July 2023. The appellant was personally in attendance; there was no representation for or on behalf of the respondent, it having been indicated that the respondent did not wish to make any submissions at hearing.

THE APPLICABLE LAW

4. The Valuation Tribunal Rules (Northern Ireland) 2007 ("the Rules"), as amended, provide at Rule 21 as follows in respect of the review of any decision of the tribunal:-

> "21.—(1) If, on the application of a party or on its own initiative, the Valuation Tribunal is satisfied that—
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> (a) its decision was wrong because of an error on the part of the Valuation Tribunal or its staff; or
>
> (b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented; or
>
> (c) new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; or
>
> (d) otherwise the interests of justice require,
>
> the Valuation Tribunal may review the relevant decision."

THE APPELLANT'S ARGUMENT

5. The tribunal, at the outset, took the appellant through the content of the review request for the purposes of clarification of the issues and the appellant elaborated upon matters which he wished to raise. The tribunal then explained in brief terms the technical position and highlighted the specific statutory grounds available to any party to seek a review and considered with the appellant the appellant's review request and which of the foregoing statutory grounds might be available to the tribunal to conduct a review of the decision. The tribunal explained to the appellant that it would initially have to consider as being properly established any statutory ground or grounds upon which the tribunal might proceed to review the decision: if the appellant failed to effectively establish any specific statutory ground the review could not proceed. As the appellant conceded that he was, to a material extent, unfamiliar with these statutory grounds and as the review request (and any subsequent communications) did not make it fully clear by specific reference to the statutory grounds upon which ground or grounds the appellant wished to advance his case, the tribunal took some care to do so and to seek clarification from the appellant.

6. After consideration of the review request and the subsequent clarification at hearing from the appellant, the tribunal discounted Rule 21 (1) (a) (b) and considered that the only possible grounds identified by the appellant were those contained within Rule 21 (c) and (d) of the Rules, the so-called "new evidence" and "interests of justice" grounds. In exploring with the appellant the "interests of justice ground" the appellant clarified that he felt that there had been indeed afforded a fair and proper hearing at first instance, but that he felt that this latter "interests of justice" ground would be properly engaged because of what he saw as an unfair outcome, from his perspective. In regard to the "new evidence" ground, the tribunal explored this ground with the appellant in considerable detail, as it was clear that this formed the main thrust of the appellant's application for review. The tribunal shall seek fully to address that part of the application below, but, in summary, the appellant's argument turned upon the proposition that, in the light of a much-enhanced understanding on his part of the issues emerging in the case, post-hearing, he then sought to revisit and to compile additional evidence which he felt would enhance his case in terms of challenging the respondent's assessment of the Capital Value of his property. He explained to the tribunal that he strongly felt that that was an error and thus he sought to challenge the tribunal's decision supporting the assessment of that Capital Value as being correct.

THE TRIBUNAL'S DETERMINATION

7. The tribunal notes the statutory power available in Rule 21 of the Rules. The appellant, as clarified at hearing, has endeavoured to make out a case on two available statutory grounds (the other grounds having been discounted as

inapplicable) to the intent that the tribunal is entitled to conduct a review of its decision upon the “new evidence” and “interests of justice” grounds, such as are provided for by Rule 21 (c) and (d) of the Rules.

8. Dealing first with the “interests of justice” ground, as clarified, the tribunal cannot see how the appellant has made out any sustainable or persuasive case for a possible review under that “interests of justice” ground. The appellant, in making his case, has indicated that he was afforded a fair and proper hearing and he has no grounds to argue the occurrence of any procedural unfairness. He makes clear that he feels this ground to be engaged for the reason that he feels that the respondent’s side have adduced evidence with which he disagrees and that he disagrees with the outcome and the tribunal’s determination. However, as has been fully accepted by the appellant, he has been afforded at first instance a fair and proper opportunity to challenge any evidence sought to be adduced by the respondent and to make further comment or submission, which he has done in the course of the first instance hearing. The appellant appears to accept that the tribunal had duly considered all evidence, information and submissions available in the matter at the first instance hearing in reaching a determination of the appeal and that the tribunal’s decision has addressed the available evidence and submissions, made relevant findings of fact and applied the relevant law and has set matters forth in reasonably comprehensive form in the decision as issued to the parties. However, he disagrees with the conclusion.

9. In considering this statutory ground of review it is clear that this is advanced for the reason that the appellant is of the view that the outcome is unjust - that he disagrees with the determination – but not upon any other substantive basis. The tribunal’s assessment is that, after affording a fair and proper hearing, the decision has recorded in summary form the essential findings of fact derived from all of the evidential material which was placed before it at the time of hearing. The tribunal has carefully considered and weighed the submissions and the arguments made in the course of the original hearing and the tribunal has dealt with and has disposed of these in the decision.

10. In the absence of any identified authority within the tribunal’s own jurisdiction being drawn to the tribunal’s attention, the tribunal is of the view that the “interests of justice” ground ought properly to be construed fairly narrowly; that certainly appears to be the accepted practice in other statutory tribunal jurisdictions. Therefore the “interests of justice” ground might, for example, be seen to apply to situations such as where there has been some type of procedural mishap. One illustration of this might be a situation where the tribunal had prevented a party from arguing an essential part of any case, or perhaps where there was some type of procedural imbalance or injustice applicable to the conduct of any hearing. In the course of the hearing process

the tribunal has carefully explored all of the appellant's contentions in the light of all of the available evidence. Nothing therefore appears to arise concerning the manner in which the original hearing was conducted by the tribunal. Generally, it is broadly recognised that the "interests of justice" in any case must properly encompass doing justice not just to the dissatisfied and unsuccessful party who is seeking a review but also to the party who is successful. Further, there is an important public interest in finality of litigation. The overriding objective contained within the tribunal's Rules also bears upon the matter.

11. The tribunal shall comment further about this in addressing the additional ground of review sought to be advanced but, in short, in respect of this specific ground it appears that the appellant has sought to re-argue in the review process certain issues. Mere dissatisfaction with the decision, without more, is insufficient. The tribunal has considerable difficulty in seeing how there are any available grounds to constitute the proper basis of a review of the tribunal's decision, in the "interests of justice". The matters raised at hearing are not sufficient to ground a successful review. Thus the tribunal's unanimous determination, in respect of this ground, is that nothing presented by the appellant affords any basis for the decision to be reviewed in the interests of justice.

12. The tribunal now turns to the most substantive ground upon which the appellant seeks to have reviewed the decision. The relevant statutory provision in Rule 21 (1) (c) reads:

> *"(c) new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then;"*

There are a number of elements to that provision:

- new evidence
- relating to the decision
- has become available since the conclusion of the proceedings
- its existence could not reasonably have been known or foreseen before then (in other words since the conclusion of the proceedings).

13. Having carefully explored with the appellant the contentions sought to be advanced, he clearly seeks to endeavour to adduce new evidence relating to the subject matter of the tribunal's decision. The tribunal examined with the appellant the nature of such evidence and whether it was in existence at the time of the first instance hearing. It consists largely of information readily available from governmental sources and records to which the public, including the appellant, would have had access. To give one example, the appellant in attachments to email communications sent to the tribunal in

support of his application for a review, has set out schedules of domestic properties in the same locality as his property, including details which he feels to be relevant to his case. He concedes that this information would have been available in advance of the first instance hearing, but he states that he did not understand the significance and importance of this until after the hearing had concluded and, further, he states that he ought to have mounted a more robust challenge to the schedule of comparables introduced into evidence on behalf of the respondent at the hearing and, as he puts it, "refused to accept these". The tribunal carefully explored with the appellant, at hearing, the issues he faced concerning the statutory requirement that any new evidence must have become available since the conclusion of the proceedings and, further, that its existence could not reasonably have been known or foreseen before the conclusion of the proceedings. Whilst conceding that the evidence which he now seeks to put forward was in existence at the time of the original hearing, the appellant has endeavoured to argue, in terms of this final statutory element, that such evidence (and especially the significance of such evidence) could not reasonably have been known or foreseen before the conclusion of the proceedings. The appellant submits that matters only became fully clear to him once the hearing had concluded and once he was in receipt of the tribunal's decision. He then embarked upon what seems to have been considerable further work in an endeavour to enhance his case.

14. The tribunal has carefully considered the appellant's submissions in regard to this ground of review. Considering the statutory provision under discussion, it is clearly the case that having received an unfavourable decision, the appellant has then sought to secure additional evidence in order to bolster his case, but which evidence would have been available to him in advance of the hearing at first instance. Enhanced comprehension or perception of relevant issues arising subsequent to a tribunal decision being received does not form a proper basis for an attempt to revisit an appeal to the tribunal, evidentially. If the tribunal were to support such a proposition, any case might be freely re-argued by an unsuccessful party by endeavouring to secure further evidence and by attempting to place this before the tribunal. There is plenty of case-law authority upon the basic principles underpinning this system of statutory review of a tribunal's decision. Tribunals have been guided by superior courts in exercising considerable caution in facilitating what has been termed "a second bite of the cherry", in other words any endeavour to re-argue cases by an unsuccessful party via the statutory review system. Thus the process is "….*not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced which was available before*" (Lord McDonald in ***Stevenson v Golden Wonder Ltd 1977 IRLR 474***). The Tribunal's broad discretion to decide whether a statutory review is appropriate must be exercised judicially "….*which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation*" (Her Honour Judge Eady QC in ***Outasight VB Ltd v Brown 2015 ICR D11***). In this case, having considered the nature of the additional evidence and the appellant's submissions in that regard, the tribunal unanimously determines that there is no proper and compelling basis

for a statutory review of the tribunal's decision under the "new evidence" ground.

15. Accordingly the tribunal's decision is affirmed as promulgated and appellant's application for a review is dismissed by the tribunal, without further Order.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 2 August 2023