

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: 9/23E

ANDREW KLIMACKI AND LINDSAY KLIMACKA– APPELLANTS

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND -RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O’Neill

Members: Mr Hugh McCormick and Dr William Wardlow

Date of hearing: 16 June 2023, Belfast

DECISION

The unanimous decision of the tribunal is that the decision on appeal of the Commissioner of Valuation for Northern Ireland is upheld, and 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 16 June 2023.
2. The hearing proceeded by way of an in person hearing in which the Appellants were present and were represented by their son (the Appellant’s Representative) and the Respondent was represented by Mr Eamonn McDonald and Mr Colin Roberts.
3. This appeal is in respect of the valuation of a property situated at 19B Monlough Road West, Monlough, Ballygowan, County Down, BT23 6ND (the subject property).

The Law

4. The law in relation to these cases is contained in the Rates (NI) Order 1977 as amended by the Rates (Amendment) (NI) Order 2006. The tribunal does not intend in this decision to set out the statutory provisions of the legislation as these provisions have been fully set out in earlier decisions of this tribunal.

The Evidence

5. The tribunal heard oral evidence. The tribunal had before it the following documents:
 - a. The Commissioner’s Decision issued on 6 March 2023;

- b. The Appellant's notice of appeal dated 13 March 2023 which includes detailed submissions;
- c. A document entitled Presentation of Evidence dated 17 April 2023, prepared on behalf of the Respondent and submitted to the tribunal for the purposes of the hearing;
- d. Response from the Appellant;
- e. Correspondence from the parties
- f. The Appellants produced an updated version of their Response from the Appellant at the hearing.

The facts

6. The subject property is a single storey detached bungalow constructed in late 2022. It has a gross external area (GEA) of 142.8m².
7. The Appellant in their notice of appeal state that the valuation should be £160,000.
8. By way of background, the subject property was initially inspected and surveyed in December 2022 and the property recorded as having a GEA of 142.8m². The property was inserted into the valuation list with a capital valuation of £250,000 effective from 8 November 2022.
9. The decision of the District Valuer was appealed to the Commissioner of Valuation. The property was inspected on 3 March 2023 and the description of the property was amended to house (bungalow) and the capital valuation was amended to £230,000. This decision was appealed to this tribunal.
10. There have been detailed submissions presented to the tribunal by the Appellant and the Respondent. The tribunal is grateful to both parties for these submissions.

The appellant's submissions

11. The Appellant in this appeal, helpfully sets out detailed information in relation to this appeal.
12. The Appellant puts forward properties which support their assessment of the capital valuation of the subject property. These comparables are submitted to be in the same state and circumstance as the subject property.
13. The properties are identified by the Appellant as:
 - a. 51 Lisdoonan Road, BT24 7HL. It is 130m². This consists of a private dwelling (bungalow), an outbuilding, garden and detached garage. It is 1.63 miles from the subject. It has a calculation of £1,462 per m² It has a capital value of £190,000.
 - b. 38c Ravara Road, BT23 6NW. It is 173m². This consists of a private dwelling (bungalow), an outbuilding, garden and an integral garage. It is 1.96 miles from the subject. It has a calculation of £1,329 per m². It has a capital value of £230,000.
 - c. 36 Clontonacally Road, BT8 8AH. It is 180m². This consists of a private dwelling (bungalow) and a garden. It is 1.97 miles from the subject. It has a calculation of £1,500 per m². It has a capital valuation of £270,000.

- d. 62 Ravara Road, BT23 6NN. It is 183m². This consists of a private dwelling (bungalow) and a garden. It is 1.97 miles from the subject. It has a capital value of £230,000.
 - e. 17A Tullyhubbert Road, BT23 6BY. It is 200m². This consists of a private dwelling (bungalow), an agricultural outbuilding and a detached garage. It is 1.04 miles from the subject. It has a capital value of £280,000.
14. In relation to the comparables used by the Respondent, the Appellant states that these should be physically very similar to the subject property, citing *Black v Commissioner of Valuation* (NIVT 5/20),
 15. The Appellant states that 17A Tullyhubbert is the closest to the subject property. It is larger than the subject being 57m² larger than it.
 16. The Appellant states that the use of 17 Monlough Road West is not correct as, while the property is 0.1 miles from the subject, it is 48% (77m²) larger than the subject property, has a large habitable basement floor and an integral garage. The Appellant states that their comparables are under 200m² and are bungalows.
 17. The Appellant also states that 4 Monlough Road West, which is used by the Respondent as a comparable within 0.5miles from the subject, is not a bungalow but is a 1.5 storey house with habitable accommodation upstairs and a detached double garage. Therefore the Appellant states that it is not an appropriate comparable.
 18. The Appellant indicates that it is agreed with the Respondent that property is localised and that properties a few miles apart can have a wide range of values. The Appellant states that the majority of the Respondent's comparables are north of the Comber Road where capital values notably increase benefitting from being closer to and more commutable to Belfast. The Appellant states that their selection of comparables with all but one (36 Contonacally Road) being south of the Comber Road provide more accurate and localised rural comparables.
 19. In relation to the setting of the subject property the Appellant states that while the Respondent states that the views of the subject are picturesque and pleasant and as such impact value by offsetting any drawbacks due to the close proximity of the industrial yard, the Appellants states that all their comparables benefit from picturesque and pleasant views be they having hill views, water views or countryside views.
 20. The Appellant states that the subject property is directly adjacent to an active farm and several commercial businesses (manufacturing and retail) which also use the shared lane to access their businesses. The Appellant states that the industrial yard has four businesses operating out of it and that commercial traffic is regular with delivery trucks and vans using the lane daily. The Appellant states that the industrial yard is accessed via a very tight, single track shared lane which the subject property is also accessed by.
 21. The subject property is also impacted by noise and smell due to the close proximity of these businesses. The Appellant states that there is a constant stream of commercial traffic, there is noise and smoke produced by iron mongers manufacturing from the industrial furnace, there are chemical deliveries and use by manufacturing business which produces industrial odours and there is heavy farming traffic.
 22. There are three industrial retractable bollards and speed bumps in place to control the speed and flow of the commercial traffic at peak times due to the volume of deliveries. The industrial bollards need to be manually lowered every

- day to allow physical access to the subject property. It would appear from the Appellant that these are lowered at 5.30am and are closed at 2pm each day. The Appellants have keys to the bollards which were installed some 6 or 7 years ago. These were installed by the owners of the businesses in the industrial yard as a security measure.
23. The Appellant states that at the time the Respondent inspected the subject property there was no commercial traffic, no nuisances, or odours as the industrial yard closes early on a Friday afternoon. Furthermore, the Appellant states that even though no other hereditaments on the shared lane have an allowance for the shared lane, none of them are as impacted as the subject in that they do not have the industrial bollards, which require to be lowered to gain access, nor do they have a narrow corner pinch point directly at their entrance. The Appellant cites a previous decision of the tribunal in which an allowance was made in the light of the fact that the property in that case was accessed via a shared lane.
 24. The subject property is located off a shared lane. The Appellant states that the subject property does not have a right of way in title along the shared drive, nor does it have a prescriptive easement as it was constructed in 2022. The Appellant's Representative states that the subject property was constructed at risk by the owners. The Appellant states that in relation to the statutory assumptions contained in Paragraph s9-15 of the Rates (NI) Order 1977, in the light of a previous decision of the tribunal these assumptions can be displaced. The Appellant states that the subject property if it were to be sold on the open market would not be good and marketable and a bank is unlikely to provide mortgage finance on it. The Appellant refers to *Stokes v Cambridge* (1961) as a means of attributing a tried and tested valuation cost principle of ransomed property. He also refers to the Scottish decision in the case of *Countesswells Development Limited v Scottish Hydro Electric Transmission plc* (2023) as stating that a hypothetical purchaser would take a cold hard look at the planning risks and potential downside of making a clean offer (as opposed to taking an option) and would thus need to consider whether a less optimistic view of the position could be taken. The Appellant states that a purchaser of the subject property would need to consider the legal risks and costs of gaining a right of way/easements when making an offer.
 25. In the light of these matters the Appellant states that the subject property should have a reduced capital value.

The Respondent's submissions

26. The Respondent in the Presentation of Evidence states that the subject property comprises a detached bungalow of 142.8m² with views over a nearby lake. It has a capital value of £230,000.
27. The Respondent referred to a list of comparable evidence highlighted in the Appendix to the Presentation of Evidence. These were:
 - a. 44 Ballykeel Road. This is a detached bungalow built in 2010 with habitable space of 146m². It is approximately 1.6 miles from the subject (as the crow flies). It has a capital valuation of £230,000.
 - b. 4 Monlough Road West which is a property with 1.5 storeys built in 1970. It is about 0.5 miles from the subject. It is 160m² and has a motor house of 43m². It has a capital value of £270,000.

- c. 15 Lisdoonan Road, which is a detached bungalow built in 1999. It has habitable space of 191.9m². It is approximately 0.7 miles from the subject. It has a capital value of £310,000.
 - d. 15 Ballykeel Road South. It is a detached bungalow built in 1991. It has habitable space of 153m². It has a capital value of £250,000.
 - e. 4 Cadger Road,. This is a detached bungalow built in 1970. It comprises a detached bungalow of 155m² and a 18m² motor house. It is 0.9 miles from the subject property. It has a capital value of £270,000.
28. The Respondent states that the location of the subject property is a serene, secluded site. There are farms and a light manufacturing adjacent to it. However, this does not justify a reduction in the capital value.
29. In relation to the access to the subject, the Respondent's representative stated that at the time of inspection he did not hear or see any disturbance due to heavy traffic nor did he detect any odours. The site and location appeared quiet and quaint.
30. The Respondent further states that the access lane to the subject property is long and narrow but physical access to the subject doesn't appear to be affected and there is no justification for a reduction of the capital value. No other hereditaments on this part of the road have any allowance for access issues.
31. It is the opinion of the Respondent that any potential drawbacks on the location of the subject and its surroundings are offset by the picturesque views over the Monlough Lake.
32. In relation to the issue concerning the lack of a right of way, the Respondent states that it must apply the statutory assumptions with regard to the key part of the lane. In considering the right of way, one of the statutory assumptions is that "The hereditament is sold free from any rent charge or other incumbrance". It is therefore contended that it is not possible to take this into consideration when assessing the capital value.
33. The Respondent clarified that it is not using 17 Monlough Road West and this is not in the schedule to the Presentation of Evidence submitted by the Respondent. However the tribunal notes that it is referred to elsewhere in the Presentation of Evidence submitted by the Respondent.
34. In relation to the comparables forwarded by the Appellant, the Respondent comments as follows:
- a. 51 Lisdoonan Road, BT24 7HL. It has a GEA of 130m². This consists of a private dwelling (bungalow), an outbuilding, garden and detached garage. It is approximately 2.4 miles from the subject. It has a capital value of £190,000.
 - b. 38c Ravara Road, BT23 6NW. It is 173m². This consists of a private dwelling (bungalow), garden and an integral garage of 37m². It is 2.9 miles from the subject. It has a capital value of £230,000.
 - c. 36 Clontonacally Road, BT8 8AH. It is 180m². This consists of a private dwelling (bungalow), a garage of 23m² and a garden. It is 2.4 miles from the subject. An agricultural relief of 20% has been applied to this property. The capital value submitted by the Appellant at £216,000 is inclusive of the agricultural relief and the unadjusted capital value is £270,000.
 - d. 62 Ravara Road, BT23 6NN. It is 183m². This consists of a private dwelling (bungalow) and a garden. It is 2.8 miles from the subject. It has a capital value of £230,000.
 - e. 17A Tullyhubbert Road, BT23 6BY. It is 200m². This consists of a private dwelling (bungalow), an agricultural outbuilding and a detached garage of

52m². It is 1.4 miles from the subject. It has an unadjusted capital value of £280,000. There is an agricultural allowance applied to this property of £224,000.

35. The Respondent states that the comparables forwarded by the Appellant are generally 2.5-3 miles from the subject and for this reason are not considered to be in the same state and circumstance as the subject.
36. In the light of this the Respondent considered that the capital value of the property is correct at £230,000.

The tribunal's decision

37. Article 54 of the 1977 Order enables a person who is dissatisfied with the Respondent's valuation as to the capital value of a property to appeal it to this tribunal. In this case the capital value has been assessed at a figure of £230,000. On behalf of the Respondent it has been contended that this figure is fair and reasonable in comparison to other properties. As against this the Appellant states that the capital value of the property is incorrect and should be amended.
38. It must be remembered that there is a statutory presumption in Article 54(3) of the 1977 Order that "On an appeal under this Article, any valuation shown in the valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown." It is therefore up to the Appellant in any case to challenge the capital value assessment and to displace the presumption, or perhaps for the Respondent's decision to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.
39. There are several issues to be considered in relation to this decision. The tribunal is grateful to the parties for their written and oral submissions in this matter. It is not possible to go into each and every aspect of the submissions in this decision, but the parties may be assured that all the submissions were taken into account in arriving at this decision.
40. The basis of valuation is the amount which on the relevant assumptions the subject property 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 (1 January 2005).
41. The Appellant in their written submissions refers the fact that each of their comparables produces a different price per square metre in relation to their comparables when compared to the subject property. The Appellant's Representative at the hearing admitted that he considered that this was not the best method to establish the capital value of the subject property. For the avoidance of any doubt the tribunal considers that this is not the basis of capital valuation. As has been recently pointed out in a recent decision of the Lands Tribunal in *RZ v Commissioner of Valuation* (VT2&3/2016 [2017]) the tribunal in deciding cases derives assistance from the following cases:

McKeown Vintners v Commissioner of Valuation VR/9/1985

"When, however, a revision of an entry in a valuation list is under consideration different principles come into play; in particular paragraph 2(1) and the concept of comparable hereditaments. The reason is simple. The very completion of the list, at general revaluation, by itself creates comparables, and paragraph 2(1) can begin to play its role.

That role is this. There can, as the Tribunal has already stated, be no challenge to the principles applied at general revaluation. Any challenge before the Lands Tribunal must be by way of an application for revision of an entry already in the list. As time progresses, if actual rental levels and turnover figures were used for the revision of a particular entry in the valuation list, it would inevitably result in that entry being increased to a level significantly higher than other entries in the list. There must therefore be a limiting factor, and this provided by paragraph 2(1) which, in essence, produces what is often termed a 'tone of the list', and which ensures fairness and uniformity. It does this by providing that at revision stage regard 'shall be had' to the net annual values in the valuation list of comparable hereditaments. Its role will be discussed in greater detail later. Suffice to say that the significance of this role increases with the passage of time...". 5 In the subject reference for "paragraph 2(1)" read "paragraph 7(2)" for "net annual value" read "capital value" and for "rent/rental levels" read "capital value/capital value levels".

A-Wear Limited v Commissioner of Valuation VR/3/2001

"The early days are important and the Tribunal agrees with Mr Hanna that the practical reality is that, if entries are not challenged, or if challenges are abandoned, the point will have been reached within a relatively short space of time at which it would have to be said that these settlements establish a reliable Tone of the List for the hereditaments in a location or category. At that stage, although still a question of balance, by virtue of paragraph 2 of schedule 12, a district valuer is almost obliged to apply that level. Skilled assessment based on proper research may justify an adjustment or allowance in individual cases, but the Tone of the List provision, although protecting ratepayers from unfairness resulting from inflation, does make anything other than a first phase challenge difficult." Examining all the material facts to be derived from the evidence, the tribunal's considered and concluded view and determination is that the completion notice is a valid one and the appeal of the appellant is therefore dismissed.

Elias Altrincham Properties v Commissioner of Valuation VR/15/2011

"For the following reasons the Tribunal is not persuaded that Mr Elias has succeeded in displacing the presumption that the valuations shown in the valuation list were correct. Both in law and in practice the time for an effective challenge to the evidential basis, that set the tone of the list at the relevant General Revaluation, is long past. (See *A-Wear Ltd v Commissioner of Valuation* [2003] and *McKeown Vintners Ltd v Commissioner of Valuation* [1991].) Any attempt now to reconsider the principles and basis on which the tone was set would be mainly speculation ... At the time the list came into operation, apart from one exception, the assessments were not challenged..."

42. These cases highlight that in the valuation list regards should be had to capital values of properties in the same state and circumstance as the subject property.
43. In considering the capital value of the subject the tribunal has carefully considered the evidence put forward by the Respondent and the Appellant as being comparable properties. The tribunal is also conscious of the fact that the rural setting of the subject makes comparable analysis more challenging and complex. This has indeed been admitted by both parties in this case.
44. The tribunal finds that the best comparable evidence to be that submitted by the Respondent. The property at 44 Ballykeel Road is a detached bungalow with habitable space of 146m² which is slightly larger than the subject. It is 1.6 miles

- from the subject property. The capital value of this property is £230,000 which is the same as the capital value of the subject property.
45. The capital value of the subject is also supported by that of 4 Monlough Road West which is a 1.5 storey home consisting of 160m² and a motor house of 43m². It is 0.5 miles from the subject. Notwithstanding that it is a 1.5 storey home rather than a bungalow the tribunal feels that other factors such as the proximity to the subject outweigh this.
 46. The capital valuation of the subject is also supported by the other evidence submitted by the Respondent, namely 15 Lisdoonan Road , 15 Ballykeel Road South and 4 Cadger Road as these (with the exception of 4 Cadger Road) are closer to the subject property than the comparables forwarded by the Appellant.
 47. The tribunal also finds that the capital valuation of the subject at £230,000 is also supported by evidence submitted by the Appellant. 17A Tullyhubbert Road consists of a bungalow of 200m² and a garage of 52m². It is larger than the subject and has a capital valuation of £280,000 (unadjusted). This supports the capital valuation of the subject property at £230,000.
 48. The Appellants submit that there should be an allowance made for the fact that the subject property is accessed by a shared laneway. It is accepted by the tribunal that the subject property is accessed by a shared laneway. It is acknowledged that there is a set of bollards on the laneway and that these must be lowered and then raised again to gain access to the subject property.
 49. The Appellant suggests that the fact of access via a laneway warrants an allowance on the capital value of the property. Indeed, the Appellant refers to another case of the tribunal in which a reduction was made for the fact that access was via a shared laneway. However, each case must be taken on its own facts and merits. In this case the access is along a laneway which is in good condition, notwithstanding that there is a tight bend on the laneway. There is no allowance for any other property on this part of the road for access. The representative from the Respondent referred to the fact that the subject property is quiet and quaint. Therefore, in this case the tribunal concludes that a case has not been made that there should be an allowance for the shared laneway in this particular case.
 50. Reference was also made by the Appellants to the businesses that are run close to the subject property. The Appellant states that this causes nuisance in the form of odours and noise etc. The Respondent states that the lorries and vans that serve these premises do not directly pass the subject property and that accordingly, physical access is unaffected. Therefore no case has been made for a reduction in the capital valuation on this basis.
 51. The final issue raised by the Appellants relates to the fact that they would state that the property does not have a formal right of way to gain access to the property. This is due to it not having a formal right of way nor a prescriptive right of way. In short, the Appellants state that the property was built in 2022 at risk by the owners.
 52. The Respondent states that in paragraphs 9 – 15 of Schedule 12 to the Rates (NI) Order 1977 (as amended) there are several assumptions that are made. One of these statutory assumptions is that “the hereditament is sold free from any rent charge or other incumbrance”. The Respondent states that in the light of this statutory assumption no account must be taken of the fact that the subject property does not have a right of way. He therefore concludes that any reference to the case of *Stokes v Cambridge Corporation* cannot be made in the light of the statutory assumption.

53. However the Appellants refer to a decision of the tribunal in the case of *Black v Commissioner of Valuation* (17 May 2021) in which it was acknowledged that the statutory assumptions can be displaced. This would mean that the absence of a right of way could be taken into account.
54. The tribunal is also aware of a decision of the Valuation Tribunal in *McAteer v Commissioner of Valuation*. This case is a complex matter relating to an application for a property to be removed from the valuation list. In this case an issue arose as to the interpretation of the statutory assumption that a hereditament is sold free from any rent charge or other incumbrance. In particular the interpretation of the word "incumbrance". In that case it was noted that it was the tribunal's interpretation that it was inappropriate to apply the broadest possible (as it were dictionary) definition or interpretation to the word incumbrance. A much more nuanced approach is required. If one were to apply the broadest approach, it must be the case that anything within that broad compass is required to be "caught" by the statutory assumption ("or other incumbrance"). That latter approach does not appear to chime with what emerges from a reading of the statutory provisions referenced in submissions nor in the jurisdiction of England and Wales. Therefore, it would appear in the light of the decisions in *Black* and importantly in *McAteer* that allowance may be made in relation to a right of way in appropriate circumstances.
55. On this basis the tribunal has to decide whether such a discretion should be exercised in this individual case. The Appellants have stated in their evidence that the subject property was built at risk in 2022 and that there is no formal right of way nor a prescriptive right of way to gain access to the property. The tribunal finds it difficult to understand how the owners of the subject property would build a property with no right of way established or indeed a contention that there would be a right of way to the subject property.
56. The Respondent states that they believe that there is a right of way for the subject property. Reference was made to Folio 691 which refers to a right of way. Also the Respondent was under the impression that there is a right of way referred to in Folio 39193. No copies of the title deeds to the property have been provided to the tribunal. There is further the issue that the subject property has been built in 2022 with no apparent objection from the owner of the laneway nor were we advised of any dispute or objection to the Appellant's use of the laneway to gain access to the subject property. There is also the use of the bollards in relation to gain access to the property and that these were put in place 7 or 8 years ago and that the Appellants have keys to lower and raise the bollards as they need to. We understand that the location of the bollards is closer to the subject than the area over which there is alleged to be no right of way.
57. In the light of the evidence placed before the tribunal it is not satisfied that the factual matrix in this case is such that an allowance should be made for the contended absence of a right of way to the subject property.
58. In the light of the evidence presented to the tribunal, it is satisfied that the capital valuation of the subject property is correct and that no allowance should be made for any of the matters referred to above. Therefore the Appellant's appeal is dismissed.

Signed: *Mr Charles O'Neill*

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 18 September 2023