Ref: NIVT 2/23E

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007 (AS AMENDED)

CASE REFERENCE NUMBER: NIVT 2/23E

EDWARD MAKEM – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: MIchael Flanigan

Members: Chris Kenton and Robert McCann

Date of hearing: 21st August 2023.

DECISION

The unanimous decision of the tribunal is that the Decision of the Commissioner of Valuation for Northern Ireland is varied as per decision below.

REASONS

Introduction

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

The Law

2. 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. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in this matter.

The Evidence

Mr Edward Makem ("the Appellant") is the owner of premises at 15A Drumnahavil Road, Mullyard Keady Co Armagh. The Appellant's case was that he and his brother had over several years converted an old outhouse into a house which was to be used by relatives and friends for poetry reading, music and storytelling. The meetings take place approximately once a month with between 20 and 30 persons attending. The premises were accessed down a long, shared lane which passed through two farmyards one of which belonged to the Appellant.

Appellant's Submissions

The Appellant's case was twofold. Firstly, that it was wrong to value the building as a dwelling house when it was not used as a dwelling and in the appellant's words never would be. Despite having the outward appearance of a dwelling house, the premises were not used as such. The building was used exclusively for people to visit for cultural evenings. Secondly that the valuation was incorrect and that the premises should be given a valuation of £20,000.

The Respondent's Submissions.

The Respondent's submissions were that the premises were a dwelling house and had been properly entered onto the list of hereditaments and that the capital valuation given to it of £50,000 was fair and reasonable and supported by evidence from comparable houses. The Respondent's Presentation of Evidence confirmed that the figure of £50,000 was the net figure after an allowance had been made for the shared access. In response to questions the Respondent gave the allowance made as between £10-20,000. The Respondent did not dispute the evidence of the Appellant as to the use of the premises but did point out that the works carried out included the installation of a bath, toilet, and a shower and that in all respects the appellant had built a dwelling house. The Respondent submitted that having built a dwelling house it was a matter for the owner how the premises were used.

The Tribunal's Decision

3. Article 54 of the 1977 Order enables a person who is dissatisfied with the Commissioner's valuation as to capital value to appeal to this tribunal.

4. It is appropriate to remember that there is a statutory presumption in Article 54(3) of the 1977 Order in terms 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 and to displace that presumption, or perhaps for the Commissioner's decision to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.

5. The general rule as to the basis of the value to be taken into account is contained in article 7(1) of the 1977 Order (as amended),

"(a) Subject to the provisions of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in paragraphs 9 to 15, the hereditament 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.
(b) In estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised."

1. The Appellant comes from a well-known musical family and his evidence in relation to the use of the premises was not in dispute. This Appeal has required the Tribunal to address the point of law, which is when is a dwelling house not a dwelling house.
2. The Rates (Amendment) (Northern Ireland) Order 2006, Schedule 2, Paragraph 41 (amending the 1977 Order, Schedule 5).defines a dwelling house as "*a hereditament used wholly for the purposes of a private dwelling*".
3. The legislation therefore defines the dwelling house by reference to the use made of it. It could therefore be fairly argued that it is not the appearance of the building which determines whether it is a dwelling or not but rather the user of the building. That said, the appearance of the building and the nature of the accommodation within it cannot be ignored by the Tribunal when examining this issue. In short, the Tribunal must bring an element of common sense to bear on the arguments presented. After the completion of the works by the Appellant the premises now

have a living room, kitchen, toilet bathroom and a spare room. The Tribunal was drawn to the inescapable conclusion that the appellant had converted an outhouse into a dwelling house.

The Tribunal does not accept the appellant's argument that the premises should not be rated as a dwelling because it has never been lived in and never will be. The legislation permits vacant houses to be rated as well as newly built houses that have never been lived in. The Tribunal accepted the submission of the Respondent that the appellant had built a dwelling house and that what he used it for was a matter for him. The decision of the Tribunal is that the premises are a hereditament for rating purposes and had been correctly added to the valuation list.

The Tribunal went on to examine the capital valuation of the premises which was also in dispute. The premises are accessed down a shared lane some 450 meters long through two farmyards. Comparable 2 was a pre-1919 detached cottage slightly larger than the premises and had been valued at £50,000 but without the same shared access difficulty. The Tribunal considered that comparable 2 and other comparables supported a valuation before allowance of £50,000 for the premises. The Tribunal took the view that a shared access allowance of £15,000 was appropriate and should be applied to a £50,000 valuation of the premises. The Tribunal decision is that an allowance of £15,000 for the shared access be applied the capital valuation of the premises. The capital valuation of the premises is then reduced to £35,000.

The Tribunal decision is that the entry for the premises in the list should be amended accordingly to £35,000. Appeal successful.

Chairman: *Michael Flanigan*
Northern Ireland Valuation Tribunal
Date decision recorded in register and issued to the parties: 12/9/23