

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 11/23E

ROBERT SHAW & DEIRDRE SHAW - APPELLANTS

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr J Leonard, President

Members: Mr A Tough FRICS & Mr G McKenna

Hearing: 18 July 2024, Belfast

DECISION

The unanimous decision of the tribunal is that the appellants' appeal is not upheld, for the reasons stated, and the tribunal Orders the appeal to be dismissed.

REASONS

Introduction

1. This appeal consists of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellants by Notice of Appeal (Form 3) appealed against the decision of the Commissioner of Valuation in a Valuation Certificate in respect of the Capital Value of a property situated at number 54A Creevytenant Road, Magheraknock, Ballynahinch, County Down BT24 8UJ ("the property").

2. The tribunal sat to hear the matter on 18 July 2024. The appellants attended in person at the tribunal hearing venue and the tribunal is grateful to the appellants for their carefully articulated and well-presented arguments. The respondent was represented by Ms Sarah Fletcher accompanied by Ms Gail Bennett, both attending in person. The tribunal panel members also attended in person.

The Background

3. Mr and Mrs Shaw, the appellants, who the tribunal found at all times to be a most pleasant and engaging couple, have for a lengthy period of time pursued litigation in various courts in Northern Ireland concerning issues relating to the property. At the outset of this appeal, the appellants had sought to have produced a substantial volume of documentation in respect of this latter course of litigation extending over many years. This documentation was contained in four lever arch files containing both A3 and A4 documents, together with a large folder which contained a number of large maps, plans and other documents. The documentation initially produced evidenced a lengthy history of multiple instances of litigation and dispute and it was noted that there had been a number of judgments made by the courts both in the County Court and in the High Court, with judicial determinations concerning the various aspects of contention. It is evident to the tribunal that the appellants harbour a very strong sense of injustice, grievance and frustration concerning a number of issues relating to the boundaries to, rights-of-way in respect of, and title pertaining to, the property. In case management, the President directed that the volume of documents which the appellants had initially sought to introduce in evidence would be significantly reduced in number. Case management Directions dated 29 January 2024 were made by the President and the appellants ultimately reverted with a much reduced number of documents, albeit in excess of what had been directed. In the case management Directions of 29 January 2024, the President had encouraged the appellants to have regard to the statutory considerations applicable to the functions of the Valuation Tribunal in the specific jurisdiction engaged, in terms of the issue of relevancy, concerning the documents sought to be introduced into evidence. The appellants attended the tribunal hearing with an additional folder containing large-scale mapping, in addition to the revised and reduced bundle of documents which had been submitted to the tribunal in consequence of the tribunal's Directions. At the commencement of the hearing the tribunal sought to enquire from the appellants about their expectations from the Valuation Tribunal appeals process and what they thought might be achieved in the course of that process. Apart from other matters, the appellants made clear that they felt that the tribunal had the capacity to make some manner of a Direction or Order compelling Land & Property Services (LPS) to correct mapping which was alleged by the appellants to be significantly in error. The allegations made against LPS (without dwelling upon these in too much detail) concerned alleged misconduct by governmental officials resulting in what the appellants depicted as being "land theft", alleged to have been facilitated by the conduct of LPS. The sense of grievance was very evident.

The Law

4. The relevant statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). As is now the case in all determinations of this nature, the tribunal does not intend in this decision fully to set out the detail of the statutory provisions of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, for the reason that these provisions have been fully set out in many previous decisions of the Valuation Tribunal. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter. Antecedent Valuation Date (“AVD”) is the date to which reference is made for the assessment of Capital Values in the Valuation List. Until a further domestic property revaluation occurs, Capital Values are, under the statutory regime, notionally assessed as at 1 January 2005, that being the AVD for the purposes of the domestic rating scheme. The 2006 Order amending legislation applied to the 1977 Order, at Article 8 (2), provided that in Part 1 of Schedule 12 (concerning the basis of valuation), after paragraph 6 there was to be inserted paragraph 7. Paragraph 7 (3) provides that the assumptions mentioned in paragraphs 9 to 15 shall apply for the purposes of determining whether one hereditament is a comparable hereditament in the same circumstances as another, this being the statutory principle underpinning assessment of Capital Value. The material provisions of the foregoing, for the purposes of the tribunal’s determination in this case, read as follows:-

11. *The hereditament is sold free from any rent charge or other incumbrance;*

12. – (1) *The hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality.*

(2) *The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.*

The Issues to be Determined and the Evidence

5. From the perspective of the respondent Commissioner, as articulated by the respondent’s representative, this is indeed a straightforward and simple case in that the tribunal is required to take heed of the pertinent statutory provisions, as mentioned above. The tribunal will return to these fundamental aspects of the respondent’s position further below, in a little detail. From the appellants’ perspective, the appellants sought to have the tribunal examine a lengthy course of litigation and to inspect mapping in detail, which matters they contend are fundamentally relevant to the issues in the appeal. To facilitate a discussion concerning the tribunal’s statutory remit, at the outset the tribunal explained to the appellants that the Valuation Tribunal was a

“creature of statute” (as it is often termed) and that it did not have an unrestricted jurisdiction; it was obliged to apply certain statutory principles and considerations in any appeal of this nature. The tribunal invited the respondent’s representative to make a brief statement of the respondent’s position which, in essence, was that a large part of what the appellants sought to argue was not relevant, given the statutory assumptions mentioned above. The respondent’s position, therefore, was that the tribunal ought to take an entirely straightforward approach to the case by keeping to the fore these statutory considerations, most particularly the notion that the fundamental basis of valuation was constructed upon the concept that the: “*hereditament had been sold free from any rentcharge or other incumbrance*”. On this argument, the tribunal was not entitled to take into account any matters excluded, expressly, by the statutory assumptions. Thus, it was submitted, in essence, the appellants were trying to have admitted certain evidence and argument which was expressly excluded on foot of these statutory assumptions.

6. Having heard the arguments for the respondent, the appellants were invited by the tribunal to respond to these arguments and to explain their case to the tribunal. The appellants clearly gave an account of specific boundary and laneway access difficulties affecting the property, stemming largely from the issues which underpinned their long-standing grievances, including in practical terms the inability for anything other than light vehicular access and consequent difficulties in such matters as septic tank pumping, central heating oil deliveries and delivery of construction materials. They stated that they were dependent upon neighbouring landowners’ cooperation for such access and that this could not be guaranteed in any manner. The appellants gave their evidence in that regard in very clear and comprehensive terms. When pressed by the tribunal as to whether the property ought to be rated at all, the appellants did not deny that they were obliged to pay rates for occupancy. However, when further pressed by the tribunal, Mr Shaw was seemingly reluctant to commit to any specific notional rates figure. Upon being pressed, Mrs Shaw stated that the appropriate Capital Value ought to be about £100,000. Whilst they had not expressly mentioned in the appeal before the oral hearing the comparators set out in the respondent’s Presentation of Evidence (more of which below), at hearing the appellants sought to challenge all of the comparators as not being relevant to the property. In essence, therefore, the appellants’ position articulated at hearing was that they did not seek to argue that the property would have no rating status at all and that it ought to be removed from the Valuation List but, rather, that the property suffered from such locational disadvantage that the Capital Value ought to be significantly reduced, the extent of the reduction presumably being left to the tribunal’s judgment.
7. In determining this appeal, the tribunal had before it the appellants’ Form of Appeal to the tribunal (Form 3) dated 28 July 2023 and the documents also included the following:
 - 7.1 A document dated 17 August 2023 consisting of a Presentation of Evidence prepared on behalf of the Commissioner of Valuation, as

respondent, by Ms Sarah Fletcher MRICS and submitted to the tribunal. This Presentation of Evidence includes a timeline (rating history/background) which indicates the following material dates:

31 January 2011: New Hereditament – “Non Domestic” (the tribunal believes that to be an error and that the intention was to refer to “domestic”) – property valued using STAR system at £390,000 (Capital Value).

26 February 2013: External Application for a List Revision with mention made: “*Mrs Shaw cannot sell her property as OSNI have changed maps and land at the front of her property no longer belongs to her*”. No access was gained to the property and the outcome was no change based on evidence gained on site. Survey accepted on the basis of the site visit.

22 March 2013: An appeal was made to the Commissioner of Valuation with the reference made to: “*dispute over land ownership/right of way – incompetence*”. The outcome was that the property was reassessed at £340,000 (Capital Value) on the basis of examination of the tone in the locality.

26 March 2015: A case was raised on behalf of the appellants by a local political representative, but after repeated attempts to contact the appellants by telephone and by recorded delivery were deemed unsuccessful, the case was closed with no change to the Capital Value.

29 February 2016: A case was raised by Mrs Shaw by telephone requesting a revaluation and the property was inspected and the case was closed with no change to the Capital Value (presumably - for that latter has been seemingly incorrectly described as being “no change to NAV” in the Presentation of Evidence).

9 May 2023: There was an application made to the District Valuer in respect of which it is recorded that the appellants had alleged that a number of unlawful alterations had been made to their Folio over a period of years since 1997 which had permitted the development and enhanced the value of adjacent lands, to their detriment, with access to the front door legally held by a third party. This ongoing legal dispute had left the appellants informed by their mortgage company that the property was worth “almost nothing”. Their application for revision of the Valuation List outlined in detail the ongoing allegations in relation to alleged fraud and misconduct in public office. The outcome was that the property was valued in tone with similar aged buildings and

properties within the immediate and neighbouring locality. There was no change to the existing Capital Value of £340,000.

5 July 2023: An appeal was made to the Commissioner of Valuation. The Presentation of Evidence sets out the basis of this appeal. The outcome was that the Capital Value was revised to £310,000 in line with comparable properties in the vicinity to include a stated 5% end allowance for difficult access. (It is noted that the respondent's representative conceded that this was an error and that the applicable figure ought to have been stated as "10%" and the tribunal has taken note of this latter concession, which is further mentioned below). (In regard to these several errors in the Presentation of Evidence it is hoped that in future cases a little more care shall be taken by the respondent's representatives in ensuring accuracy in regard to documentation being placed in front of the tribunal).

- 7.2 As mentioned, the Presentation of Evidence has set forth the appellants' case to the Commissioner which was stated in the following terms:

"The valuation is not true or correct as the direct result of Land & Property altering our OS & Folio mapping without our permission and we are being informed of the said changes by neighbours of 54A Creevytenant Road. This is to gain our land and property to allow and gain planning permission and sightlines for building and developing. This is a direct result of fraud which commenced in or about 2007 by OS mapping of 54A Creevytenant Road being altered and is [indecipherable – "paved"?] the way for fraud against the Shaw family, the Honourable Court or the law. Land & Property Services fraud in their legal duty to provide a service to the Shaws family who made loose [sic] to the value of 54A Creevytenant and staff of LPS were involved in the said alteration of map/fraud involving collusive behaviour."

- 7.3 Also included with the documentation is what is referred to as being an "open letter" to LPS dated 19 July 2023 consisting of some eight pages, which goes into considerable detail regarding the allegations made by the appellants. At the end of this document is a schedule consisting of 15 separate allegations concerning Folio boundary maps and alleged alterations and specific allegations in regard thereto. The tribunal has also noted further correspondence, emails and documents from the appellants directed to the tribunal.
8. Whilst the appellants specifically did not seek to challenge in any detail the comparables set forth in the Presentation of Evidence, they did argue in the course of the oral hearing that they felt that these comparables selected on behalf of the respondent Commissioner were not appropriate. The appellants did not seek to introduce evidence of any other, more appropriate to them, comparables. The Presentation of Evidence provides for the property

description. It states that the property consists of a detached chalet style house built in or around 1997. This is located close to the roadside and is accessed via a short laneway located between the subject property and the, now demolished, number 54 Creevytenant Road. Construction is of block with a rendered finish and there is a pitched tiled roof. Externally, there is a triple attached garage and a barn. The property is located approximately 3.5 miles from Ballinahinch and approximately 9 miles from Lisburn. The site itself is comprised in Folio DN 39227 and extends to approximately 0.12 ha and is edged red on the map provided. Also in the ownership of the appellants is Folio DN 40094 which is stated to be a grassed area located to the rear of the dwelling, extending to some 0.55 ha. That latter is shown edged blue in the map provided. Mapping and photographs of the entranceway access are provided in the Presentation of Evidence and any evidence that regard was carefully noted by the tribunal. The Presentation of Evidence also outlines the appellants' grounds of appeal stated to be comprised in two lengthy documents which were attached to the appeal, but the relevant extracts are encapsulated in the Presentation of Evidence, as follows:

“We dispute the amount owing on the said Rates Bill and have 28 days to dispute this amount by submitting and [sic] appeal and will be appealing to the Northern Ireland Valuation Tribunal as disclosed within letter date 5/7/2023. We have been waiting on LPS to disclose to us why LPS lied to us in the said letter dated 22.5.2023..... We have attached our reply to letter of 22.6.2023 regarding Fraud Investigation services which does contain untruths, false representation and fails to disclose all the said facts and truths regarding LPS altered/changed mappings and LPS/OS/Land registry failing to provide the Shaw family with an honest service from in and around 1997 up to 2023. In brief the Shaw family have paid the rates from 1997 at 54A Creevytenant Road Ballynahinch until the fraud and corruption was uncovered within LPS, and who since 2008 have been involved in altering/changing our LPS mappings and taking sections of Shaw family property/land and adding into the folio of other neighbours without the Shaw's knowledge and consent and this was since 1997. LPS have refused to disclose the truth in relation to the said Land Theft/land steal. It has been directed by the Courts within NI that the Shaw family property is virtually worthless as a direct result of these changes/alterd O/S, Land registry and LPS mappings. By the changing of these maps the LPS have been in breach of three claimed court orders regarding Mappings. We totally accept that Rates must be paid, and it is lawful to do so when the property is properly valued. Any reasonable person would expect to pay the rates for the correct value of what their property is worth, but the issues disclosed in this open letter, discloses that the Shaw's have been placed in a situation where they have negative factors against their property as a direct result of LPS, who have had 25 years to resolve the issue but are making the situation worse by having altered our said folio maps approximately 17 times from 1997 to the date of this open letter.”

9. In the Presentation of Evidence there is a location map indicating the location of the property and of some other properties (an additional four properties making five properties submitted for consideration by the tribunal, including the subject property). These latter four are submitted on behalf of the respondent as being comparable and thus are put forward as providing submitted appropriate evidence concerning the assessment of the Capital Value of the property.

10. The Appendix to the Presentation of Evidence provides details in respect of a total of five properties, including the subject property. These are as follows:-
 1. **54a Creevytenant Road, Magheraknock, Ballynahinch BT24 8UJ** (the property). Privately built housing, post-1990 detached house, 1.5 storeys, built 2008, habitable space 306 m², garage 87 m², outbuildings 49.9 m², rural location. The (adjusted) Capital Value is £310,000.
 2. **37 Creevytenant Road, Creevytenant, Ballynahinch BT24 8UJ**. Privately built housing, post-1990 detached chalet house, 1.5 storeys, built 2003, habitable space 279 m², ancillary space 27 m², garage 1 55.4 m², garage 2 87 m², outbuildings 145 m², rural location. The Capital Value is £320,000.
 3. **39a Creevytenant Road, Creevytenant, Ballynahinch BT24 8UJ**. Privately built housing, post-1990 detached chalet house, 1.5 storeys, built 2018, habitable space 228.70 m², ancillary space 0 m², garage 1 56.1 m², garage 2 0 m², outbuildings 43.8 m², rural location. The Capital Value is £260,000.
 4. **2 Lough Road, Boardmills, Magheraknock, Lisburn BT27 6TS**. Privately built housing, post-1990 detached bungalow, 1.5 storeys, built 2018, habitable space 320.50 m², ancillary space 0 m², garage 1 56.1 m², garage 2 0 m², outbuildings 43.8 m², rural location. The Capital Value is £340,000.
 5. **15a Creevytenant Road, Creevytenant, Ballynahinch BT24 8UW**. Privately built housing, post-1990 detached house, 2 storeys, built 2003, habitable space 329.40 m², ancillary space 0 m², garage 1 86.1 m², garage 2 0 m², outbuildings 145 m², rural location. The Capital Value is £360,000.

The Appellants' Submissions

11. The submissions advanced on behalf of the appellants have been set out above and very little in addition was added in the oral submissions made to the tribunal in order to elaborate upon the case. As mentioned, the appellants harbour a sense that a grave injustice or a series of injustices have been visited upon them by statutory agencies. They are seeking a solution from the Valuation Tribunal. The tribunal took considerable care to discuss with the appellants and the parties present the statutory remit of the tribunal in capital

valuation appeals of this nature, under the relevant legal provisions. The tribunal, likewise, took care to explain to the appellants the legal import of the statutory assumptions and, further, to explain how the tribunal was unable to disregard these statutory assumptions in reaching a determination in this appeal. It is unnecessary to state much further in this regard, but the tribunal did give a proper account to the appellants as to why it was unable to peruse (in the considerable detail sought by the appellants) the mapping and other documentation sought to be introduced into evidence by the appellants and references to many previous legal actions that had been taken through the various courts in Northern Ireland. The statutory remit, as explained, raised the important issue of relevancy. As the matter had been subject to much legal action over the years through various courts, the tribunal specifically questioned the appellants upon whether, in recent times, they had indeed successfully pursued any legal actions through the courts resulting in a judgement in their favour; upon being so questioned, they confirmed that they had not.

The Respondent's Submissions

12. For the respondent it is asserted that the Capital Value has been assessed in accordance with the statutory principles and assumptions and in accordance with proper practice. It is submitted that this Capital Value assessment exercise was correctly conducted and it is argued that the volume of material sought to be introduced into evidence by the appellants is entirely irrelevant, given the statutory considerations and most particularly the statutory assumptions. It is unnecessary for the purpose of this determination to say much more about the fairly straightforward case advanced on behalf of the respondent Commissioner, particularly upon the statutory considerations and the comparative valuation method.

The Tribunal's Determination

13. The tribunal begins its determination by making the observation that the appellants' stance in this case has been very clearly articulated and is entirely understood. Thus, the appellants have carefully and clearly stated both in the written documentation and also in oral submissions made at hearing their position which is that the property is significantly disadvantaged on account of the subject matter of the litigation and alleged boundary alterations and also the difficulties concerning access to the property via the laneway. This appeal matter therefore appears to be capable of reduction to identify three separate issues. Firstly, there is the issue of the allegations advanced by the appellants concerning boundary and land matters and the allegations that they have directed towards government agencies which matters, they state, have had a direct impact upon the property's Capital Value. Secondly they argue in general terms that the comparables selected by the respondent Commissioner in this appeal are not appropriate for valuation purposes. Thirdly, the appellants contend that access to the property is severely

restricted and that this must inevitably significantly affect the Capital Value of the property, indeed rendering it nearly “worthless”, as they claim.

14. Dealing with these matters in turn, as the tribunal has taken some care to explain to the appellants in the course of the hearing, the statutory assumptions are not matters of discretion, to be applied or not, or potentially to be effectively disregarded by the tribunal in reaching a determination in such capital value appeals. These assumptions were put into place by the legislature for good reason and indeed have long-standing roots in matters of rating valuation. Accordingly, the tribunal has absolutely no discretion to disregard - to leave out of the equation - any “encumbrance”. Taking these assumptions properly into account, the tribunal must proceed on the statutory basis that the property has been ascribed a Capital Value on foot of a notional sale at AVD (see above). Although this may be a little difficult for the appellants to understand, if this valuation regime were to be summarised as being something of an artificial process, a construct arising out of a statutory regime, it might be a little easier perhaps to understand. Accordingly, one is not considering what the property might fetch in an open market sale on today’s terms. Thus any “encumbrance” must be disregarded. It is precisely those encumbrances raised by the appellants which the tribunal is compelled to disregard, but which the appellants have sought to introduce into evidence by referring to the lengthy history of their legal issues and difficulties. However, the tribunal cannot take into account any of this: it has no discretion whatsoever in the matter. The tribunal has, indeed, considerable sympathy with the appellants, but that is the way it must be.
15. It is a different matter when one comes to consider locational disadvantage regarding the access to the property. That is certainly a matter which can be taken into account. However the (corrected) abatement afforded by the respondent is 10%. Taking into account comparable reductions of Capital Value for locational disadvantage be afforded, the ascribed figure of 10% sits correctly with the tribunal. Thus, the tribunal takes the view that this percentage reduction of 10% has been adequately and fairly assessed and that there ought to be afforded nothing in addition to this.
16. Thirdly, turning to the comparable properties, these have, in turn, been carefully assessed by the tribunal’s expert Valuation Member and the tribunal, collectively, comes to the concluded assessment that there is useful evidence available from all of the four comparable properties as set forth in the Presentation of Evidence. Accordingly, examining the comparables evidence in the Appendix to the Presentation of Evidence, there is no doubt, in the tribunal’s considered assessment, that included in the Presentation is a list of properties with unchallenged Capital Values (the unchallenged nature of these indicates a settled picture for that underpins the so-called “tone of the list”). These stated comparables are largely in the same locality and in similar circumstances to the subject property. These individual properties provide some helpful evidential material. The tribunal has carefully considered this evidence in reaching a conclusion in this appeal.

17. The tribunal now turns to an important point and it is this: there is a burden placed upon appellants in any appeal of this nature which must be discharged in order to succeed. As the tribunal has often observed in its decision-making, there exists a statutory presumption which is contained within the 1977 Order, Article 54(3). On account of this, any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown. Therefore, in order to succeed in an appeal, any appellants must either successfully challenge and displace that statutory presumption of correctness or perhaps the Commissioner's decision on appeal, objectively viewed, must be seen by this tribunal to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the Capital Value to an appropriate figure.
18. Firstly, the tribunal, in assessing this appeal, saw nothing in the general approach taken to suggest that the case had been approached for assessment in anything other than the prescribed manner, as provided for in Schedule 12 of the 1977 Order. This being so, the tribunal examined the essential issue of whether or not the appellants had put forward sufficient challenge to the respondent's schedule of comparables and sufficient evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation. The appellants had been invited by the tribunal, in the course of the hearing, to confirm if they had themselves had identified or selected alternative properties and if they were in a position to put forward alternative comparative valuation evidence. They confirmed that they had not done so and that they had no specific submissions to make in that regard.
19. As the provisions make clear, these statutory provisions specify that the Capital Value of the property shall be the amount which (on the statutory assumptions) the 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. Further, in estimating the Capital Value regard shall be had to the Capital Values of comparable properties in the same state and circumstances as the property. The tribunal, in conducting this exercise, gave full consideration to all of the evidence and argument including an analysis of the appropriateness of selection and the weight to be attached to the properties put forward as comparables.
20. Having carefully considered everything, the tribunal's unanimous decision is that the appellants have not put forward a sufficiently compelling case effectively to displace the statutory presumption of correctness in respect of the Capital Value applied to the property and there is no other reason for the appeal to succeed.
21. Taking everything into account, the tribunal's unanimous conclusion is that the property is correctly assessed at the current Capital Value. This being the tribunal's determination, the appeal is dismissed, without further order

James Leonard

J Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 29th August 2024