

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 9/24

MS BELINDA WARD & MR ARTHUR McKEVITT - APPELLANTS

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr J Leonard, President

Members: Mr A Tough FRICS & Ms Nichola McCartan

Hearing: 27 January 2025, 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 41 Lower Newtown Road, Killeen, Newry BT35 8US ("the property"). An oral hearing was requested.
2. The tribunal sat to hear the matter on 27 January 2025. 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 Mr Andrew Carr MRICS accompanied by Ms Joanne Attwood, both attending in person and the tribunal is grateful to the respondent's representatives. The tribunal panel members also attended in person.

The Background and the Appellant's Arguments

3. Belinda Ward and Arthur McKeivitt, who are father and daughter and the appellants in this appeal, clarified in the course of the proceedings that they had no issue of challenge in regard to any matter save in regard to a single and very important issue as far as they were concerned. This relates to the access to the property from the main road. The sense of grievance concerning the issue felt by the appellants was indeed quite genuine and was very evident in the hearing. The appellants gave evidence that they regarded the access entrance to, and exit from, the property onto the main road to be extremely dangerous on account of the lack of proper roadway visibility of oncoming traffic. Indeed Arthur McKeivitt recounted to the tribunal a "near miss" a few years ago on that account when exiting the property in a vehicle, which he stated could have resulted in a fatality. The appellants felt very strongly that the relevant statutory authorities were not fulfilling their duties in ensuring that adequate visibility splays were constructed at the location in order properly to address the roadway visibility issues affecting the property and to ameliorate any risk. The appellants argued that, in reality, no one would want to purchase the property and no mortgage lender would lend on the property because of this issue, until it was properly resolved. That, the appellants submitted, was bound to affect the Capital Value. They contended that this very important issue had in no way been taken into account by the respondent is assessing the Capital Value, against which assessment the appeal was now made. When further questioned by the tribunal, Belinda Ward conceded that she was not endeavouring to argue that the property ought to be removed from the Valuation List but, rather, that the Capital Value ought to be commensurately reduced in order to take proper account of the issue.

The Law

4. The Tribunal, in the course of the hearing, took considerable care to explain to the appellants some of the statutory provisions that now follow, to avoid any possible misunderstanding, as some of the concepts are perhaps a little difficult for those unfamiliar with the law fully to grasp, especially so the full import of the "statutory assumptions" that are mentioned below. 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.*

.....

15.—(1) *There has been no relevant contravention of—*

(a) any statutory provision; or

(b) any requirement or obligation, whether arising under a statutory provision, an agreement or otherwise.

(2) *In sub-paragraph (1) “relevant contravention” means a contravention which would affect the capital value of the hereditament.*

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. From the appellants' perspective, the appellants sought to have the tribunal examine some correspondence with the respondent in the matter and from Transport NI (DRD).

6. To facilitate a discussion concerning the tribunal's statutory remit, as the hearing proceeded the tribunal explained to the appellants that the Valuation

Tribunal 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 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. On this argument, the tribunal was not entitled to take into account any matters excluded, expressly, by the statutory assumptions. Thus, so it was submitted, the appellants were trying to have admitted certain evidence and argument which was expressly excluded because of these statutory assumptions.

7. 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 the difficulties experienced and the history and the access difficulties affecting the property.
8. In determining this appeal, the tribunal had before it the appellants' Form of Appeal to the tribunal (Form 3) and the documents also included the following:

8.1 A document dated 1 October 2024 consisting of a Presentation of Evidence prepared on behalf of the Commissioner of Valuation, as respondent, by Mr Andrew Carr MRICS and submitted to the tribunal. This Presentation of Evidence includes a timeline (rating history/background) which indicates the following material dates:

15 September 2016: Case registered to value a new property.

30 April 2024: Capital Valuation (CV) Certificate was issued confirming CV of £230,000.

13 May 2024: An appeal was made to the Commissioner of Valuation challenging the CV.

4 June 2024: CV was reduced to £215,000 from £230,000.

17 July 2024: Appeal made to the tribunal.

8.2 As mentioned, the Presentation of Evidence has set forth the appellants' case to the Commissioner. Two issues are thereby identified. Firstly, are the appellants liable for rates as a result of occupancy of the property? Secondly, what is the Capital Value and does access from the Lower Newtown Road affect the valuation? The appellants specifically did not seek to challenge in any detail the comparables set forth in the Presentation of Evidence nor did they 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 new-build detached bungalow located off the Lower Newtown Road, approximately 1.7km from Meigh Village. It

states that it is accessed from the Lower Newtown Road, via a good laneway. Photographs of the property are provided, including of the entranceway in both directions along the Lower Newtown Road and an aerial view is included. Also included in the Presentation of Evidence are details, together with photographic and other evidence, in regard to stated comparables. As these are not challenged in this appeal, the comparables addresses and Capital Valuations may be briefly stated.

9. 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. 41 Lower Newtown Road, Killeen, Newry (the property). The (adjusted) Capital Value is £215,000.
 2. 36 Lower Newtown Road, Newry. The Capital Value is £250,000.
 3. 20 Lower Newtown Road, Newry. The Capital Value is £245,000.
 4. 41 Low Road, Newry. The Capital Value is £260,000.
 5. 28 Jacks Road, Newry. The Capital Value is £200,000.

The Tribunal's Determination

10. The tribunal begins its determination by making the observation that the appellants' position in this case has been very clearly articulated and is entirely understood. It is indeed quite straightforward. This appeal as suggested by the respondent appears to be capable of reduction to identify two issues: Firstly, are the appellants liable for rates as a result of occupancy of the property? Secondly, what is the correct Capital Value and does access from the Lower Newtown Road affect the valuation?
11. Dealing with these issues in turn, there is no question but that the property is occupied for rating purposes. No argument has been advanced that it is not occupied, nor that it is incapable of occupation on account of the matters raised in this appeal. That then brings the tribunal to the next point. As mentioned, the tribunal has taken some care to explain to the appellants in the course of the hearing that 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 appeals. These assumptions were put into place by the legislature for good reason and indeed have long-standing roots in matters of property rating valuation. Accordingly, the tribunal has absolutely no discretion to disregard these. 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, for example, any "encumbrance" must be disregarded. One of the appellant's arguments cantered upon the expression: "There has been no relevant contravention of (a) any statutory provision; or (b) any requirement or

obligation, whether arising under a statutory provision, an agreement or otherwise". "Relevant contravention" is defined as meaning a contravention which would affect the capital value of the hereditament. However it is precisely those matters raised by the appellants which the tribunal is compelled to disregard. The tribunal cannot take into account any of this and it has no discretion whatsoever in the matter. Having said that, the tribunal has considerable sympathy with the appellants and understands why this appeal was made. However, harsh though that may sound, that is the way it must be.

12. Turning to the comparable properties set out in the Presentation of Evidence, these have not been expressly challenged. However, the tribunal is nonetheless obliged to examine the matter of correctness. These comparables 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 additional comparable properties in the Presentation of Evidence. Examining this there is no doubt, in the tribunal's considered assessment, that these stated comparables are largely in the same locality and in similar circumstances to the subject property. These individual properties thus provide helpful evidential material.
13. 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 (as opposed to an assumption – see above) 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.
14. 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. 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 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.

15. 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.
16. 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

**James Leonard, President
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: 31st January 2025