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: 42/15

MR & MRS PATRICK GALBRAITH - APPELLANTS
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

DECISION OF PRESIDENT OF THE NORTHERN IRELAND VALUATION TRIBUNAL ON APPLICATION FOR LEAVE TO APPEAL TO THE LANDS TRIBUNAL

I grant leave to the appellants to appeal to the Lands Tribunal, for the reasons stated below.

REASONS

Introduction

1. The appellants in this matter appealed under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order") against the decision of the Commissioner of Valuation in respect of a hereditament situated at 33 Newry Road, Newtownhamilton, County Armagh BT35 0AG ("the Property").

2. The appellants had requested an oral hearing (with written submissions) and a hearing of the appellants' appeal took place on 3 May 2017, with the appellants being self-represented. By decision, with reasons, promulgated by the tribunal on 25 May 2017 ("the Decision") the tribunal's determination as set forth in the Decision was that the appeal should be allowed. The tribunal allowed a 12.5% reduction in capital value. This figure of 12.5% represented a cumulative assessment concerning proximity of the Property to an amenity site and also to a wind turbine. A copy of the Decision was sent to the parties to the appeal. The appellants, by email ("the review request") dated 7 June 2017, sought a review of the Decision. In the review request the appellants stated that, during the hearing on 3 May 2017, they became aware that information regarding allowances for amenity sites and wind turbines were withheld from them until the hearing, resulting in them not having all relevant information to construct their case fully. In previous correspondence they had asked if any allowances were granted for the close proximity of amenity sites or wind turbines to domestic dwellings. The specified statutory grounds upon which the appellants sought a review of the Decision were recorded by the

tribunal in the subsequent decision on review ("the Review Decision") as follows:- (i) that the Decision was wrong because of errors; and (ii) that a review was required in the interests of justice. I allude to further detail of the statutory review provisions below.

3. Prior to the oral review hearing which was granted by the tribunal, the appellants sent emails respectively dated 17 September 2017 and 3 November 2017, raising issues which they wished to be considered by the tribunal in the course of the review hearing. The review hearing took place on 28 November 2017. The tribunal's Review Decision was promulgated on 6 December 2017. The tribunal's determination, as set forth in the Review Decision, was that the appellants had not made out any of the grounds justifying relief and that the tribunal's Decision remained unaffected.

4. By email ("the appeal request") dated 20 December 2017 received by the Secretary to the Tribunal, the appellants requested leave from the President of the Valuation Tribunal to appeal the Review Decision (and also presumably the Decision) to the Lands Tribunal, under the statutory provisions mentioned below.

The Applicable Law

5. The statutory provisions relevant to my determination of the appellants' request for leave to appeal in the matter are to be found in the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order") and in the Lands Tribunal (Amendment) Rules (Northern Ireland) 2007 ("the Lands Tribunal Rules 2007"). The provisions of the Valuation Tribunal Rules (Northern Ireland) 2007, as amended ("the 2007 Rules") are also relevant. These are as follows (in respect of the 2006 Order): -

> "Appeal from decision or direction of Valuation Tribunal
>
> 54A. —(1) Any person who is aggrieved by any decision or direction of the Valuation Tribunal under Article…. 54(2) may, with the leave of—
>
> (a) the Lands Tribunal; or
>
> (b) the President of the Valuation Tribunal,
>
> appeal to the Lands Tribunal."

These are as follows (in respect of the Lands Tribunal Rules 2007):-

> " 4. In rule A1—
>
> (a) -
>
> (b) at the end there shall be added the following paragraphs—

"(4) …… an appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal shall be instituted by serving on the registrar a notice of appeal in accordance with Form AC within 28 days from the date of the grant of leave of appeal by the President of the Valuation Tribunal.

(5) A notice of appeal under paragraph (4) shall be accompanied by—

(a) a copy of the decision or direction of the Valuation Tribunal against which the appeal is made; and

(b) a copy of the decision of the President of the Valuation Tribunal granting leave to appeal.

(6) An application for leave to appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal may be made to the Lands Tribunal only where the applicant has been refused leave to appeal by the President of the Valuation Tribunal."

The statutory provisions relevant to the Valuation Tribunal's review procedure are to be found in the 2007 Rules. There are four statutory grounds of review. Rule 21 of the 2007 Rules is the relevant provision and this provides as follows: –

"Review

21.—(1) If, on the application of a party or on its own initiative, the Valuation Tribunal is satisfied that—

(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 statutory provisions relevant to the Valuation Tribunal's powers of case management are to be found in the 2007 Rules, at Rule 9 and Rule 26. The relevant provisions are as follows: –

"General power to manage proceedings

9.—(1) The Valuation Tribunal may, either on its own initiative or on the application of a party, make such interim orders as it considers necessary or desirable in relation to an appeal before it.

(2) Without prejudice to the generality of paragraph (1), the Valuation Tribunal may make an interim order—

(a) as to the manner in which an appeal is to be conducted, including any time limit to be observed;

(b) that a party provide additional information;

(c) requiring the attendance of any person in Northern Ireland to give evidence or to produce documents;

(d) extending any time limit, whether or not expired (including any time limit for instituting an appeal);

(e) requiring the provision of written answers to questions put by it;

(f) staying the whole or part of any proceedings;

(g) that part of the proceedings be dealt with separately;

(h) that any person who the Valuation Tribunal considers has an interest in the appeal may be joined as a party to the proceedings;

(i) that a witness statement be prepared or exchanged; or

(j) as to the use of experts or interpreters in the proceedings.

(3) An interim order may specify the time at, or within which and the place at which, any act is required to be done.

(4) An interim order may impose conditions."

"Powers

26. Subject to the provisions of these Rules and any directions given by the President under paragraph 14 of Schedule 9B to the 1977 Order, the Valuation Tribunal may regulate its own procedure."

The Determination

6. I have carefully perused the Decision and the Review Decision in the light of the issues raised in the appeal request as a basis for seeking leave to appeal. I have noted the content of the communications dispatched by the appellants to the tribunal between the time of making the review request and the conclusion of the oral hearing which resulted in the Review Decision. I have, further, considered any information concerning the manner in which the hearings were conducted by the tribunal and I have deliberated upon the

procedure engaged in the management of the hearings and the matter, generally, by the tribunal. I have endeavoured to consider, insofar as possible, any issue emerging going beyond mere dissatisfaction on the appellants' part with the outcome, which might properly constitute a substantive, proper and persuasive basis upon which leave to appeal might be granted to the appellants.

7. Examining the content of the appeal request and the evidence available to the tribunal and the various issues raised in the written submissions of the appellants, this request for leave to appeal raises issues concerning capital valuation allowances relating to proximity to amenity sites, capital value allowances relating to proximity to wind turbines, the proper assessment of interior space within a hereditament for the purposes of capital valuation and fairness of procedure concerning the appeal process to the Valuation Tribunal and the subsequent review procedure. The following points are made by the appellants:

7.1 It is contended that respondent did not disclose, until the final moments of the substantive hearing of the appeal which took place on 3 May 2017, certain information regarding the extent of capital value allowances afforded for proximity to wind turbine installations. As a result of this late disclosure, the tribunal proceeded upon the (mistaken) assumption that 10% was the maximum extent of any applicable allowance that could be afforded. Further, the appellants contend that they had previously requested from the respondent information as to other allowances granted in Northern Ireland and had been informed that no other such allowances were granted. The appellants contend that they were, as they put it, "not allowed to discuss this at the hearing on 03/05/2017". The appellants contend that they subsequently became aware that a 12.5% allowance had been granted for another property (on the basis of wind turbine proximity) and assert that they may have been granted a higher allowance had the respondent supplied this information to them prior to the hearing on 3 May 2017.

7.2 The next contention is that the tribunal was unaware at the hearing of 3 May 2017 that a specific property referred to had been granted an allowance of 10% for proximity to an amenity site, but that this site had been closed to the public for a number of years and yet the appellants had been granted a 5% allowance for close proximity of the Property to an amenity site and that this was subsequently removed when the appellants raised the wind turbine issue.

7.3 The appellants assert that they can only go on the information supplied by the respondent which, they state, has a duty of care and should be willing, openly, to disclose information to the public. On account of the procedure employed by the respondent in failing to disclose information, so it is asserted, the tribunal was unaware of much of this information until the closing minutes of the hearing on 3 May 2017 and the tribunal would not have had sufficient time to digest this information and the appellants were not given permission to respond by the tribunal.

7.4 The appellants also seek to raise an issue regarding the assessment of part of an interior area of the Property, which is a floored area above the garage, which they assert has been incorrectly assessed for rating purposes.

8 It is contended, in very clear terms, by the appellants that certain information or evidence was imparted towards the conclusion of the oral hearing on 3 May 2017 which had not been provided to the appellants in advance of the hearing. The indication from the appellants was that this information was of considerable significance. The information related to capital value allowances for proximity to wind turbines. The appellants in the appeal request state, "we became aware that a 12.5% allowance had been granted for another property." It is not entirely clear whether that stated awareness on the appellants' part arose from information provided by the respondent towards the conclusion of the May 2017 tribunal hearing or after that hearing had concluded. The reason for this distinction being potentially significant relates to the wording of Rule 21 (1) (c). The statutory requirement is, firstly, that new evidence, to which the decision relates, has become available since the conclusion of the proceedings and, secondly, that its existence could not reasonably have been known or foreseen before then. Accordingly, if evidence has been provided prior to the conclusion of any hearing, it will not fall within that statutory ground, for the reason that such evidence has not become available since the conclusion of the proceedings. The appropriate course, if any party feels that they have been, so to speak, "ambushed" by late evidence, would be to request from the tribunal appropriate time to consider the late evidence and to address any such as they might see fit, or indeed to seek an adjournment of the proceedings if additional time were to be required. It would be also essential, in the proper and fair management of any proceedings, for the tribunal to keep a keen eye on proceedings in order to ensure that any party is not placed at a material disadvantage or subjected to prejudice or unfairness, by the tribunal properly exercising its case management powers.

9. The appellants, further, contend that they were "not allowed to discuss this (stated late evidence) at the hearing on 03/05/2017". In other words they are asserting procedural unfairness in that, firstly, information was held back from them by the respondent until the closing stages of the May 2017 hearing and, furthermore, that the tribunal did not provide a fair and proper opportunity for the appellants to deal with this additional information.

10. These assertions have, accordingly, been encapsulated in the expressly requested grounds of review: (i) that the Decision was wrong because of errors and (ii) that a review was required in the interests of justice. In the Review Decision (at paragraph 3) the tribunal has stated that despite the seeming restriction placed by the appellants to just two out of the four grounds available, the tribunal considered the appellants' review in the context of Rule 21, as a whole. That was indeed a reasonable and proper

course for the tribunal to take, given that the appellants were not legally represented. In doing so, the tribunal has committed itself to a full scrutiny of the Decision, applying, insofar as applicable, the platform afforded by any one or more of the four statutory grounds.

11. How then did the tribunal address the issues in the review hearing and encapsulate these in the subsequent Review Decision? At paragraph 4 of the Review Decision the tribunal, correctly, states that the purpose of the review procedure is not intended to be a "second bite at the cherry" for an appellant who feels he has not submitted his best case to the tribunal. At paragraphs 5 and 6 of the Review Decision the tribunal deals with the Rule 21 (1) (a) ground and states that none of the grounds mentioned by the appellants come within the heading of an obvious and manifest error. The tribunal then proceeds, at paragraph 7 of the Review Decision, to address the Rule 21 (1) (c) ground, that being the "new evidence" ground. Here, the tribunal sets out, in some detail, the contentions advanced. In summary, the tribunal's determination is that the onus was on the appellants to call evidence to the tribunal to indicate why the assessment by the respondent, in the first instance, was incorrect. There was no reversal of the burden of proof on the respondent to bring before the tribunal evidence which it did not rely upon in making its decision, by way of disclosing properties which it did not think were directly comparable. The suggestion, accordingly, that the decision was tainted or coloured by the failure of the respondent to provide the address of a recycling plant, was not justified, in the tribunal's determination. The tribunal also mentions what it refers to as being the post-hearing disclosure by the respondent (in response to the appellants' application for a review) that a similar property had received a 12.5% reduction. The tribunal comments that comparables disclosed post-decision are new evidence but in this instance that did not cause the original Decision to be undermined and the fact that a reduction above 10% was allowed did not mean that automatically the range referred to in the original Decision should be altered. The tribunal observes that the original Decision was based on the evidence before it and this did not alter the validity of the Decision.

12. The tribunal, further, in the Review Decision proceeded to deal with the issue of habitable space. Dealing with this latter issue first, I do not determine that the appellants have raised any issue in the request for leave to appeal which would result in my granting leave on that, habitable space, point alone. My determination is that the tribunal has fairly and properly addressed the habitable space point, as set forth in the original Decision and in the Review Decision.

13. Turning then to the other issues raised in the appellants' request for leave to appeal, the appellants have clearly raised the issue as to whether fair and proper procedure was followed towards the conclusion of the tribunal hearing

when what is stated to have been late evidence was introduced by the respondent in the May 2017 hearing. A number of courses could have been followed either by the appellants expressly applying for more time to consider the evidence or indeed the appellants applying for an adjournment or, materially, by the tribunal seeking to exercise its case management powers in order to ensure that the appellants were not placed at a disadvantage. Whilst the tribunal indicated in the Review Decision that the appellants were provided with an opportunity to consider the additional evidence, it is not fully clear what opportunity was afforded and the appellants clearly remain aggrieved that, as they see it, no proper opportunity was indeed afforded to them. The case management powers available are as mentioned above. Any one or more of these case management powers could have been deployed by the tribunal, including the possibility of tribunal adjourning the matter of its own motion or seeking additional evidence. It is important to remember that proceedings before the Valuation Tribunal are not inherently adversarial, but are rather inquisitorial. The function of the Valuation Tribunal is to seek, by means of this inquisitorial approach, any relevant facts and information bearing upon any issue arising in the appeal and not to avail merely of affording a platform for parties to any appeal to conduct an adversarial contest. The specific function of the respondent is to assist the Valuation Tribunal in that regard. Examining all of this, I am concerned that the appellants were placed at a material disadvantage and that the tribunal did not take appropriate steps to address the issues emerging towards the conclusion of the oral hearing, nor did the tribunal properly exercise its inquisitorial function, as mentioned above. The opportunity afforded by the review procedure was thereafter not availed of by the tribunal. For this reason, my determination is that this is a proper ground upon which to grant leave to appeal to the appellants.

14. Further, the tribunal has accepted in the Review Decision that new evidence emerged after conclusion of the hearing (for this could not been “new evidence” for the purposes of the statutory review ground if it had emerged prior to the conclusion of the proceedings). There was evidence emerging of a hereditament receiving a 12.5% reduction. Notwithstanding this and the appellants’ clear assertion, in seeking a review, that there was indeed material new evidence properly requiring to be considered by the tribunal, the tribunal’s conclusion in the Review Decision was that the tribunal’s original Decision was based on the evidence before it and that this latter did not alter the validity of the Decision. I am regrettably unable to comprehend the logic underlying that conclusion. The appellants were seeking to introduce new evidence material to a potential reduction in capital value beyond 10%. For the tribunal then to state that the tribunal’s Decision was based upon the evidence before it, the logic being that the tribunal was unable to consider, upon review, anything beyond that initial evidence, appears to negate the very concept underlying Rule 21 (1) (c). This latter proposition is that a party is entitled, upon review, to seek to introduce such new evidence, on the basis that this new evidence might cause the tribunal to alter its decision. This was a statutory ground available to the appellants.

However, the tribunal in the Review Decision does not clearly explain how and why this statutory entitlement otherwise available to the appellants was properly considered by the tribunal but ultimately rejected as having no validity. The appellants are entitled to a proper explanation of this; they did not receive such an explanation. For these reasons, my determination is that this constitutes a proper ground upon which to grant leave to appeal.

15. As I am satisfied that there is a proper and substantial basis for the appellants' request for leave to appeal in respect of the foregoing points and as I am not satisfied that the tribunal has properly and fully discharged its duty in these various respects, my determination is that I shall grant leave to the appellants to appeal to the Lands Tribunal in the matter.

Dated this 20th day of February 2018

James V Leonard, President
Northern Ireland Valuation Tribunal