

**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 7/17**

**ROBERT ALAN ARLOW - APPELLANT**  
**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 do not grant leave to the appellant to appeal to the Lands Tribunal, for the reasons stated below.

**REASONS**

**Introduction**

1. The appellant 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 17 Ardaluin Heights, Newcastle BT33 0RA ("the Property").
2. The appellant, after some correspondence with the Secretary to the Valuation Tribunal, indicated that he was content for the appeal to be disposed of by written representations. The hearing of the appeal "on the papers" duly proceeded on 6 June 2018. By decision, with reasons, promulgated by the tribunal on 24 July 2018 ("the Decision") the tribunal's determination as set forth in the Decision was that the appeal should be dismissed and a copy of the Decision was sent to the parties to the appeal, including to the appellant, on 25 July 2018. The appellant thereafter entered into some quite protracted correspondence with the Secretary to the Valuation Tribunal, which correspondence, taken together, was deemed to constitute a request on the appellant's part for a review of the Decision. Such a review may be conducted under the statutory provisions in that regard (see the Valuation Tribunal Rules (Northern Ireland) 2007 ("the Rules"), at Rule 21). After some further requests for a postponement of the review hearing on the part of the appellant, the tribunal ultimately conducted a hearing of the review request on 17 April 2019. The appellant shortly before the listed hearing date indicated that he was unable to attend the oral hearing and that he was content for the hearing to

proceed in his absence, on the basis of the papers and submissions placed before the tribunal.

3. By decision on review, with reasons (“the Review Decision”), promulgated by the tribunal on 23 May 2019 the tribunal’s determination as set forth in the Review Decision was that the appellant had not made out any of the grounds justifying relief pursuant to Rule 21 of the Rules and that the Decision remained unaffected and the appellant’s application for a review was accordingly dismissed.
4. The appellant thereafter entered into further correspondence with the Secretary to the Tribunal and in consequence of this the statutory provisions pertaining to any appeal against the Decision were further explained and clarified to the appellant. Ultimately, by letter dated 17 July 2019, received by the Secretary to the Tribunal on 22 July 2019, the appellant provided what constituted a request (“the appeal request”), which constituted an application by the appellant to the President of the Tribunal for leave to appeal the Decision (and the Review Decision) to the Lands Tribunal, under the statutory provisions now mentioned.

### **The Applicable Law**

5. The statutory provisions relevant to my determination 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”). 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 Determination**

- 6. I would make the initial observation that the documentation and the correspondence in this matter is extensive. I have carefully perused not only the Decision and the Review Decision, but also any associated documents and papers arising in this case in order to identify both the issues expressly raised by the appellant in the appeal request and also all other pertinent information regarding the appeal to the Valuation Tribunal and the manner in which it was dealt with at the substantive hearing and in the course of the review process, resulting in the formulation and promulgation of the Decision and the Review Decision, against which decisions the appellant now seeks leave to appeal to the Lands Tribunal. I have, specifically, considered any information concerning the manner in which the two hearings were conducted by the tribunal; I have deliberated upon the procedure engaged in the management of the two hearings and, generally, by the tribunal. I have endeavoured to consider, insofar as possible, any issue emerging in the matter going beyond mere dissatisfaction on the appellant's part with the outcome of the substantive hearing and the review hearing which might properly constitute a good and persuasive basis upon which leave to appeal might be granted to the appellant.
- 7. The appeal request may be analysed by identifying what are helpfully classified by the appellant as constituting "two issues" which the appellant summarises as being, firstly, "*premature application of increased rates*" and, secondly, "*excessive rates valuation*". These are accordingly the two issues upon which the appellant seeks to ground his request for leave to appeal and in respect of which I shall address this determination. The appellant has sought to clarify in the appeal request the basis for these two grounds to be advanced and these grounds may also be related back to certain elements of the extensive correspondence which preceded the appeal request.

## **The First Ground**

8. Expanding upon the first of these two grounds ("*premature application of increased rates*"), the appellant's argument in this appeal process is that any increase in rates was applied by Land & Property Services ("LPS") a year too early. Focusing upon the specific issue of dispute underlying this first ground or issue, there is clearly a material conflict between the appellant's assertion, on the one hand, that works conducted to the property had not been completed (this relates to the construction of an extension), resulting in an alteration to the Capital Value and that LPS was not entitled to revise the valuation, at the time they did, whereas, on the other hand, the argument advanced on behalf of the respondent Commissioner is that the property was inspected by an LPS Valuer and was determined to be in such a state and condition that the rating revision was properly applied at the time when this was done.
  
9. I have examined the content of the Decision in respect of this first identified issue. It will be noted that, from paragraph 6 of the Decision onwards, the tribunal has expressly set forth the appellant's submissions, such as these were advanced before the tribunal in writing. Here the tribunal has specifically recorded the appellant's assertion, in the light of any evidence, that the extension to the property was not completed at the time the property was inspected by the LPS Valuer and that the property should not have been so assessed as at 6 March 2017 and, further, that the revised rates assessment should only have been applied when the works were fully completed, with a consequent rating liability arising from 1 April 2018. The tribunal has also noted the submissions made on behalf of the respondent and, specifically, at paragraph 19 of the Decision, the assertion is recorded that when the LPS Valuer inspected the property on 5 April 2017 he found the extension to be complete and capable of beneficial occupation and indeed his factual determination was that it was actually under occupation at that time. The tribunal, as is evident from the Decision, then proceeded to resolve this conflict and to reach a determination in respect of this matter, identifying as it did in paragraph 27 of the Decision the importance of the issue with reference to whether or not the enhanced rates (relating to an assessed Capital Valuation of £330,000 evident from the Certificate of Valuation issued on 6 March 2017) should properly be assessed with effect from 1 April 2017 or, alternatively, in the following rating year. In paragraph 29 of the Decision the tribunal's factual conclusion is that the appellant remained in occupation of the subject property during the period of construction of the extension and that the District Valuer on 6 March 2017 found the extension to be at an advanced stage of construction and ready to be valued. On that basis, the tribunal found that the extension was properly included in the Capital Valuation as at 6 March 2017.

10. I have to consider, in determining whether or not an issue arises upon which properly to grant leave to appeal, whether the tribunal's assessment of the evidence and conclusions of fact and the determination arrived by the tribunal in the Decision was in some manner unfair or perverse or taken in disregard to the proper application of the law or material evidence. In other words, the question is: was this a determination in regard to the specific issue upon which no reasonable tribunal, properly directed as to the law and grounded upon properly determined facts, could have made? Examining the content of paragraph 29 of the Decision, I observe an explanation afforded by the tribunal for its conclusion which, although brief, does contain the salient elements of information upon which the tribunal's conclusion has been made. (I note that this first issue was subject to further examination by the tribunal in the course of the review process and I will make a further observation regarding that below). Considering all of the evidence which was placed before the tribunal and the tribunal's assessment, materially, of the weight of the evidence put forward by the respondent, when set against the evidence and assertions of the appellant, the tribunal's conclusion on this issue is, in my determination, a permissible conclusion. Taking this into account, I do not determine that leave to appeal ought to be afforded to the appellant concerning this assessment of the evidence and application of the law and the consequent determination made by the tribunal as set forth in the Decision.
11. It might perhaps be opportune to remain with this issue and to examine how the same (the first identified) issue was addressed by the tribunal in the review process. The Review Decision was issued by the tribunal on 23 of May 2019 and this issue was again advanced by the appellant in the review process. It will be noted that the appellant's submissions are recorded in the Review Decision, from paragraph 12 onwards. Specifically at paragraph 13, the tribunal manifestly take some care to address the appellant's contention that the respondent had increased the Capital Valuation from April 2017, rather than from April 2018, that is to say prior to the time that the extension had been finished and, so it is argued, that the extended part of the property was ready for beneficial occupation. The argument is recorded as being advanced by the appellant that the LPS Valuer had only visited the property before the structural work required (under revised planning permission) could even be started. The tribunal's determination, upon review, concerning this specific issue is set forth at paragraph 26 and thereafter in the Review Decision. Paragraph 28 of the Review Decision is quite specific in recording that the tribunal (at the substantive hearing) had accepted the evidence put forward on behalf of the respondent and that the tribunal had determined that the extension was properly included in the Valuation List on 6 March 2017. Indeed, it is further clarified in the Review Decision that the tribunal found that, on the statutory assumptions, including the assumption relating to average state of internal fit out, the property was properly included in the Valuation List on 6 March 2017. Again, in determining whether to grant leave to appeal in relation to any matter arising from the Review Decision, I have to consider whether the tribunal's assessment, upon review, of the substantive Decision and any evidence and conclusions of fact and the determination arrived by the

tribunal as recorded in the Decision and the Review Decision was in some manner unfair or perverse or was taken in disregard to material evidence or argument or the proper application of the law. Again, the question is: was this determination, upon review, one which no reasonable tribunal, properly directed as to the law and grounded upon properly determined facts as set forth in the Decision, could have made?

12. Examining the relevant content of the Review Decision, I observe a detailed and thorough explanation afforded by the tribunal for its conclusions with reference to the various statutory provisions in relation to review. Once the tribunal had arrived at a conclusion upon the law and the salient facts, in the absence of perversity or in the absence of a conclusion and determination which no tribunal, properly directed, could have reached, there is decision-making which any tribunal is entitled to make without challenge upon appeal. Considering all of this, I do not determine that leave to appeal ought to be afforded to the appellant upon this first identified issue, either in regard to the substantive Decision or in respect of the Review Decision.

### **The Second Ground**

13. I now turn to the second identified issue, "*excessive rates valuation*". As is evident from a reading of the Decision, from paragraph 6 and thereafter, the tribunal has set forth in some detail the appellant's submissions running to paragraph 15. Following that, from paragraphs 16 to 21 are recorded the respondent's submissions. It is clear from the foregoing that the tribunal was fully alert to all of the arguments advanced on behalf of the parties in terms of the relevant evidence and conclusions of fact and application of the law. From paragraph 22 onwards of the Decision the tribunal has addressed, in turn, in its consideration of the issues, matters such as, firstly, the size of the property, secondly, the alteration of the Valuation List (and the matter referred to above), thirdly, the basis of valuation for rating purposes, fourthly, the valuation of the property by Mr Graham, fifthly, the comparables evidence, followed finally by the tribunal's summary conclusions. The first issue disposed of by the tribunal is perhaps ancillary to the two identified issues. This relates to a dispute about the Gross External Area ("GEA") of the property. Nonetheless the tribunal's conclusions of fact are clearly stated. It is not necessary to discuss here the second issue, for that has been addressed above. In regard to the third issue, the tribunal has noted the valuation of the property by Mr Graham and has stated, in paragraph 36, the conclusion that this valuer's opinion becomes part of the evidence to be considered by the tribunal. The tribunal then proceeds to consider the comparables evidence, from paragraph 37 onwards, in the context of the statutory provisions and the tribunal has addressed the issue of the pertinent evidence in the succeeding paragraphs. The tribunal has stated, in summary terms and taking into account the statutory presumption of correctness, why its conclusion is that

the appellant has not provided sufficient challenge to the respondent's schedule of comparables.

14. Again, I return to the issue of whether or not to grant leave to appeal in regard to the Decision and the manner in which the concise statement of the applicable law, the relevant conclusions of fact from the evidence, and the tribunal's determination have been set forth. The same test applies to my consideration of the issues as is mentioned above. Here, I observe a Decision which lucidly sets forth the respective arguments of the parties to the appeal, the relevant findings of fact, the statutory matrix, and the reasons for the tribunal's conclusion and determination. In the absence of perversity of decision-making and absent of any conclusion and determination which no tribunal, properly directed, could have reached, there is recorded in the Decision a series of determinations which any tribunal would be entitled to make, without challenge upon appeal. For this reason I do not determine that leave to appeal ought to be afforded to the appellant upon this second identified issue in regard to the substantive Decision.
15. Turning then to the Review Decision and concerning this second identified issue in respect of which leave to appeal is now sought by the appellant, I have examined the Review Decision and the ancillary documentation, including the detail of arguments advanced by the appellant in pursuing his review application. Again, as mentioned, the tribunal has identified the pertinent law including the four potential statutory grounds of review and has dealt with these, in turn, after having recorded the appellant's submissions in some detail from paragraph 12 to paragraph 22 of the Review Decision. Examining the tribunal's determination of the issues, from paragraph 23 onwards, it can be observed that the tribunal has taken some care to address, with reference to each potential statutory ground, sequentially, the issues raised by the appellant and the tribunal has also taken care to mention some relevant decisions which were of assistance to the tribunal. This was not a cursory and unsatisfactory exercise, but rather the tribunal has taken care to identify and to explore the issues sought to be advanced by the appellant (and respondent) and has addressed these issues in turn in a comprehensive piece of decision-making. Having taken these steps, the tribunal's recorded conclusion is set forth in paragraph 47 of the Review Decision where it is stated that the tribunal is satisfied that the appellant has not made out any of the grounds justifying relief pursuant to Rule 21 of the Rules. For that reason the application for a review was dismissed.
16. Having examined the Review Decision, my conclusion is that there are no grounds advanced by the appellant enabling me to grant leave to appeal. This is so as there has been a thorough and diligent examination of the relevant issues in the statutory context and the tribunal's conclusion is one which a reasonable tribunal, properly directed, could have arrived at by proper application of the law.

17. In general terms, I have scrutinised both the Decision and the Review Decision in order to determine the manner in which the tribunal addressed the salient issues and any general matters of procedural fairness. Any party to an appeal before the Valuation Tribunal is entitled to have a reasonably comprehensive and clear adjudication concerning any issues raised or emerging in any appeal. The tribunal's fundamental obligation is adequately to address and to dispose of any pertinent issues in order to give any party a clear and adequately comprehensive indication of why they have won or lost (see in that regard ***Meek v City of Birmingham District Council [1987] IRLR 250 CA***). That task has been accomplished in this case.
18. For these reasons I do not grant leave to the appellant to appeal to the Lands Tribunal in the matter. As is mentioned above, in the event of my refusal to grant leave to appeal, any party aggrieved is entitled to apply to the Lands Tribunal for leave to appeal, under the pertinent statutory provisions in that regard.

Dated this            14<sup>th</sup> day of August 2019

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