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: 7/17

ROBERT ALAN ARLOW – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr T Hopkins FRICS and Dr P Wardlow

Date of hearing: 17 April 2019, Belfast

DECISION ON REVIEW

The unanimous decision of the tribunal is that there are no proper grounds made out by the appellant to enable the tribunal to review the decision of the tribunal dated 24 July 2018 and thus the tribunal's decision is affirmed and the appellant's application for review is dismissed.

REASONS

Introduction

1. This is an application for review of a decision of this tribunal ('the decision') in respect of a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order"). The decision was issued to both parties by the Secretary of the Northern Ireland Valuation Tribunal ('the tribunal') on 25 July 2018.

2. The appellant, by letter ('the review letter') dated 15 August 2018 and received in the Tribunals Hearing Centre on 22 August 2018, requested that, due to personal issues, he be afforded more time to form his application for review. This request was copied to the Respondent who had no objection to this. In the circumstances

the tribunal afforded the Appellant until 21 September 2018 to submit a formal application for review.

3. By correspondence dated 12 September 2018, 18 September 2018, 6 October 2018 and 16 October 2018 the appellant submitted extensive submissions in relation to the application for review.

4. The review was listed for hearing on 4 December 2018 and was adjourned due to the personal reasons of the appellant. At the request of the appellant the matter was sought not to be listed before April 2019. In the circumstances, the tribunal agreed to this and the matter was listed for an oral hearing on 17 April 2019.

5. The appellant submitted a letter dated 7 April 2019, making further submissions and indicating that, he fully intended to attend the hearing.

6. The Secretary to the Tribunal further wrote to the appellant on 10 April 2019 indicating that any evidence should be submitted to the tribunal in a timely manner to allow all parties the opportunity to see and respond to it. He was also advised that new evidence on the day would only be admissible if accepted by all parties.

7. By letter dated 15 April 2019 the appellant made further submissions and indicated that due to health issues he may not be able to attend the hearing in person but was content that his written evidence be used in his absence.

8. The matter having been listed for 2pm on Wednesday 17 April 2019 proceeded at 2.20pm on that date. The appellant was not present. The respondent was represented by Ms Gail Bennett and Mr Gordon Bingham. Two matters of clarification were given by the respondent. Mr Bingham confirmed that on 5 April 2017 the extension to the property was complete in that both upstairs and downstairs was finished. He recalled having sat at the kitchen table with the appellant. The respondent also indicated that in the letter from the appellant dated 15 April 2019 reference was made to the property having a gross external

area of 295m^2 whereas it has only 230m^2 with over 60m^2 of unheated areas of a garage and conservatory. The respondent confirmed that the gross external area of 295m^2 included the conservatory but did not include the garage. Apart from these matters the respondent was content that the matter proceeded on the basis of all the evidence submitted in respect of the application for review.

9. All the submissions of the appellant in his correspondence were considered by the tribunal in relation to this application for review.

The Law

10. The Valuation Tribunal Rules (NI) 2007 ('the Rules'), as amended provide at rule 21 as follows in respect of the review of any decision of the tribunal:

> "21.-(1) If, on the application of a party or 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; *(the first ground)* or
> (b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had good reason for failing to be present or represented; *(the second ground)* 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; *(the third ground)* or
> (d) the interests of justice require *(the fourth ground)*
> the Valuation Tribunal may review the relevant decision."

11. The nature of a review application of a decision of the tribunal is that the appellant has in the first instance to establish proper grounds upon which the tribunal might proceed to review the decision. If such grounds are not established then the matter cannot proceed to a review.

The Appellant's submissions

12. In his extensive submissions to the tribunal in respect of this application for review the appellant has raised several matters as outlined below. This can of

necessity only be a summary of the full submissions. However, all the evidence given by the appellant in each of his letters was taken into account.

13. The appellant submitted in his letter dated 18 September 2018 (as augmented in his letter dated 6 October 2018) that the respondent had increased his valuation from April 2017 rather than April 2018 – before the extension to the subject property was finished and ready for occupation by his mother. It was argued that Mr Bingham on behalf of the respondent had only visited his property before structural building work required under the revised planning permission could even be started- e.g. the removal of a bedroom window and insertion of a replacement velux window. The upstairs was therefore 'out of bounds' until the work was finished towards the end of July 2017. The appellant indicates that he was still living in the original house and in efforts to speed things up while waiting for his builder to resume work, he had been doing whatever he could to progress the preparation by working on the unaffected extension downstairs rooms – lounge and kitchen – painting, tiling, decoration and installing basic furnishing – garden/conservative [sic] table and chairs, spare lounge suite from the house etc. The appellant further indicates that the roof was on his extension before it was finished but that does not mean that it was completed and able to be occupied.

14. The appellant further states that an independent valuer Mr Eric Ruddle has valued his property as at 1 January 2005. His valuation values the property at £275,000, some £55,000 less than the respondent's valuation. The appellant indicates that he does not understand how he is paying so much more rates than his neighbour at No 18 whose house has had several extensions since 2005: adding three extra rooms, converting part of the garage, adding a new door access etc. The appellant stated that he considered that his evidence has been simply brushed aside.

15. In his letter dated 6 October 2018, the appellant refers to what he calls the respondent's inaccuracies. He states that his property was built in 1986 and not 1987 and has only been extended once, when he was granted planning permission and built the side extension in 2015.

16. He further states that the capital value of his property was £215,000 (the same as No 18). He refers to the fact that rates should be purely based on capital valuations and therefore does not understand the relevance that the respondent placed on the area of properties. He confirms that he has already stated that his property has approximately 230m^2 of habitable (heated) rooms, the rest being uninhabitable. He questions why therefore the unheated garage and conservatory are included in the area of his habitable property. In his research he has noted that detached garages and garden rooms are never recorded by the respondent nor taken as part of the property's area.

17. The appellant states that the notification by Building Control in June preceded the planners' instruction to stop and either lower the roof apex or submit a revised retrospective application. He states that it was complying with building control regulations that resulted in a small increase in the roof apex height which the planners picked up on. He had to wait until his builder who carried out the structural work required (remove window, block up and finish the wall opening, install a roof velux, reinstate tiled roof and refinish the roof structure and internal ceiling in the eastern side of the extension). This work was only completed at the end of August 2017.

18. The appellant used the ratio of LPS's area to valuation as a simplified way of comparison. Rather than cherry-picking a few properties he states that he included a large number of properties.

19. The appellant in his letter of 6 October 2018 then makes submissions in relation to the respondent's submissions. He submits that area is not stipulated in the Rates Act as the method for assessment.

20. The appellant refers to other properties not being assessed with aerial photography and does not understand why this is the case.

21. The appellant in his letter dated 7 April 2019, enclosed a signed statement by his builder Conor McKay dated 29 March 2019. In his statement the builder indicates that in March 2017 the appellant employed him to carry out some building work in

accordance with his planning permission which he had been granted at the end of February 2017. He had been engaged to carry out work on the unfinished extension at 17 Ardaluin Heights, Newcastle, County Down. However due to his need to complete another project first and wait for building materials, e.g. Velux window, timber, etc. the builder indicates that he was unable to start right away, being eventually able to get his team on site in the second week of April 2017. Among the items of work that he carried out was to block up a previously constructed window opening and install a Velux skylight in the roof of the extension, etc. The builder further states that his building work was completed by early July 2017 which then permitted other tradesmen access to complete external and internal works, such as tiling, painting, electrical etc thus enabling the safe occupation by Mr Arlow's elderly mother. The statement from the builder goes on to say that the property extension when he had completed his part of the work (July 2017) would not have been safe or fit for occupation. He agreed with the assessment that the property was not ready for occupation until late September 2017.

22. The appellant, in his letter dated 15 April 2019, enclosed a letter from Lindsay Graham chartered surveyors and estate agents dated 15 April 2019 stating that the market value of the subject property in January 2005 would have been in the region of £280,000 to £285,000. He also resubmitted a copy of the valuation from Mr Eric Ruddle. The appellant indicates in his letter that he asked both valuers why their valuations were lower than that of the respondent and they both gave similar answers including: that the subject property has a shared driveway with right of way issues, the position in a housing development (i.e. less desirable than private stand-alone property, overlooking from all four elevations in a cul-de-sac placement, distance from town amenities, less generous/desirable site and non-freehold.

The Tribunal's determination of the issues

23. As has been stated earlier, there are four possible grounds on which to base an application for a review of a decision of the Valuation Tribunal. The appellant has not indicated in his submissions which of the grounds he is relying on to base his

application for a review. Therefore, the tribunal has assessed each of the appellant's submissions against each of the relevant grounds as a whole.

24. In respect of the second ground for review, that a party who was entitled to be heard at a hearing but failed to be present, had good reason for failing to be present or represented, the appellant had indicated in his notice of appeal that he was content for the appeal to be dealt with by written representations. Furthermore, in relation to the appeal alone the material he submitted ran to over 146 pages. Therefore, there are no reason that the appellant should succeed on this ground for application for review in respect of any of his submissions made in his application for a review.

25. At this point it is worth pointing out that 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 to have another go.

26. In the first of his submissions the appellant submits that the capital valuation of his property was increased before the extension to his property was completed. In this regard he relies on evidence that was put forward at the hearing of this matter. In addition, he has now submitted a statement from Mr Conor McKay, his builder to the effect that the extension was not complete as at 6 March 2017 as he was only able to commence work in the second week of April 2017. Among the items of work carried out was to block up a previously constructed window opening and install a Velux skylight in the roof of the extension, etc. He further states that his building work was completed by early July 2017 which then permitted other tradesmen access to complete external and internal works, such as tiling, painting, electrical etc thus enabling the safe occupation by Mr Arlow's elderly mother.

27. The appellant in his own evidence states that he was still living in the original house and in efforts to speed things up while waiting for his builder to resume work he had been doing whatever he could to progress the preparation by working on the unaffected extension downstairs rooms – lounge and kitchen – painting, tiling, decoration and installing basic furnishing – garden/conservative [sic] table and chairs, spare lounge suite from the house etc. The appellant

further indicates that the roof was on his extension before it was finished but he argues that does not mean that it was completed and able to be occupied.

28. The representative from the respondent who attended the property on 5 April 2017 indicated that the new side extension was complete to the point of being capable of beneficial occupation and found that it was under actual occupation. He indicated that the external building works were complete. The District Valuer on 6 March 2017 found that the extension to be at an advanced stage of construction and ready to be valued, using aerial photography. The tribunal at the hearing accepted the evidence of the respondent and found that the extension was properly included in the valuation list on 6 March 2017. The tribunal finds that on the statutory assumptions including an average state of internal fit out, the property was properly included in the valuation list on 6 March 2017.

29. In *Crawford* v *Commissioner of Valuation*, a previous decision of the Valuation Tribunal, the tribunal stated in relation to Rule 21(1)(a):

> "The review procedure under this head is designed to correct obvious and fundamental flaws which arose because of human error, errors which when pointed out, are self-evident, patent and objectively, clearly erroneous. It is impossible to conjure up an exhaustive list of the type and nature of errors, which may be relevant, but if a Statement of Case failed to be included or dealt with at an appeal or if the body of one decision somehow became attached to the title of a different decision, such are the types of error which would entitle any party, or the NIVT of its own initiative, to seek a review."

30. Applying this first ground for review, to this submission forwarded by the appellant, there is nothing in this submission that comes under the ground of obvious and manifest error in the decision.

31. In relation to the third ground for review – that 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, in respect of this submission the application for review on this ground must fail as well. In this case the issue of whether the extension to the property was properly included in the valuation list was one of the fundamental issues which was considered at the hearing as evidenced in the decision in paragraphs 9, 18-

19 and 26-30. Also, the evidence of Mr McKay would have been known or foreseen before the conclusion of the hearing in this case.

32. The question of where it would be appropriate to review a matter under the final ground in the 'interests of justice' has been considered by the tribunal in other cases, notably in *Cairns* v *Commissioner of Valuation*. In that case the President of the Valuation Tribunal concluded:

> "In the absence of any identified authority within the tribunal's own jurisdiction being drawn to the tribunal's attention, the tribunal is of the view that the 'interests of justice' ground ought properly to be construed fairly narrowly; that certainly appears to be the accepted practice in other statutory tribunal jurisdictions. Thus the 'interests of justice' ground might, for instance, be seen to apply to situations such as where there has been some type of procedural mishap…. Generally it is broadly recognised that the 'interests of justice' in any case must properly encompass doing justice not just to the dissatisfied and unsuccessful party who is seeking a review but also to the party who is successful. Further, there is an important public interest in finality of litigation. The overriding objective contained within the tribunal's rules also bears upon the matter."

33. In the light of this, there is nothing in the applicant's submission that would warrant a review of the decision on this ground.

34. In relation to the appellant's second submission, the appellant states that an independent valuer Mr Eric Ruddle has valued his property at 1 January 2005 values at £275,000 some £55,000 less than the respondent's valuation. He has also now included a valuation from another chartered surveyor in support of his submission that the market value of the subject property on 1 January 2005 would have been substantially less than the assessed value.

35. The issue of how capital valuations are carried out and in particular the valuation by Mr Ruddle was addressed in the hearing. His valuation merely gives his opinion of what the property would have achieved on the relevant date. He does not confirm actual sales evidence, nor does he address any comparable evidence in his valuation. The valuation by Lindsay Graham is a valuation akin to that undertaken by Mr Ruddle.

36. In the light of this there is no ground for a review on the basis of the first ground for review that there is nothing in this submission that comes within the heading of an obvious and manifest error.

37. In relation to the third ground for review, the valuation by Lindsay Graham was submitted after the date of the hearing in this case. However, its purport is merely to support the valuation carried out by Mr Ruddle which was placed before the tribunal at the hearing. Therefore, it does not present any new evidence of materiality that was not available at the time of the hearing or its existence could not have reasonably been foreseen before then and therefore this does not present a ground for review on this basis.

38. In relation to the fourth ground for review, there is nothing in this submission to warrant that the interests of justice require a review of the decision, given that a valuation along the lines of the new valuation had already been submitted and was taken into account by the tribunal at the hearing of this case.

39. The submission that the appellant does not understand how he is paying so much more rates than his neighbour whose house has had several exensions since 2005 does not come within the ground of obvious and manifest error. Neither, is it new evidence of materiality that was not available at the time of the hearing or its existence could not have reasonably been foreseen before then and therefore this does not present a ground for review on this basis. Further it does not warrant a review in the interests of justice. There can be a feeling sometimes that neighbours are paying more for their rates than their neighbours. However, there is a statutory basis for the assessment of the capital valuation of residential property which is contained in the Rates (NI) Order 1977.

40. The applicant states that he considered his evidence has simply been brushed aside. It is up to the tribunal to consider the evidence before it and to weigh up such evidence. This contention without more does not warrant a successful ground for review of its decision under any of the first, third and fourth grounds for review contained in the Valuation Tribunal Rules.

41. The appellant in his letter dated 6 October 2018 refers to what he calls the respondent's inaccuracies. He states that his property was built in 1986 and not 1987 and has only been extended once, when he was granted planning permission and built the side extension in 2015.

42. The fact that the property was built in 1986 and has according to the appellant only been extended once are not matters of materiality as to constitute an obvious and manifest error for the purposes of this matter. Neither is it new evidence of materiality that was not available at the time of the hearing, nor its existence could not have reasonably been foreseen before then and therefore this does not present a ground for review on this basis. This is also not a matter that would warrant a review on the 'interests of justice' ground.

43. The appellant questions the use by the respondent of gross external areas in capital valuations of properties. In establishing the capital valuation of properties, the legislation states that "regard shall be had to the capital values in the valuation list of comparable hereditaments in the same state and circumstances as the subject property". This includes the size of the relevant property.

44. The appellant has in his correspondence before the hearing and in this application for review referred to the measurement of his property. For instance, in his letter dated 15 April 2019 he states that his property was without warning increased from 290m^2 to 295m^2 whereas it is only 230m^2 habitable areas with over 60m^2 of unheated area i.e. garage and conservatory. However, it has been accepted by the tribunal in paragraph 25 of its decision that the subject property has a gross external area of 295m^2 and a garage of 46m^2.

45. There is nothing in this submission to give grounds for review as an obvious and manifest error. It does not present any new evidence of materiality that was not available at the time of the hearing or its existence could not have reasonably been foreseen before then and therefore this does not present a ground for review on this basis. Nor does it ground a successful application on the grounds of interests of justice.

46. The appellant states that he used the ratio of LPS's area to valuation as a simplified way of comparison. Rather than cherry-picking a few properties he states that he included a large number of properties. The evidence of the appellant and respondent was considered by the tribunal in coming to its decision. There is nothing in this submission to ground an application for review on any of the grounds for review contained in the Valuation Tribunal Rules.

Conclusion

47. The tribunal having considered this matter in detail is satisfied that the appellant has not made out any of the grounds justifying relief pursuant to Rule 21 of the Valuation Tribunal Rules and it is the unanimous decision of the tribunal that its original decision remains unaffected and the application for a review is dismissed.

Signed: Mr Charles O'Neill, Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 23rd May 2019