

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1997 (AS AMENDED)
AND THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007

CASE REFERENCE: 8/17

ROBERT BAIN – APPELLANT AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT
NORTHERN IRELAND VALUATION TRIBUNAL

DATE OF HEARING: 6th DECEMBER 2017

Chairman: Stephen Wright

Members: Mr Eric Spence MRICS and Mr Peter Somerville

DECISION

The unanimous decision of the Tribunal in respect of the Capital Valuation of 92 Annvale Road, Aughnagurgan, Keady BT60 2RY is that the Valuation of the Commissioner of Valuation is upheld and the Capital Valuation of the subject property of £120,000 is correct.

Introduction

1. The Appellant did not attend the Hearing. The Respondent did not attend the Hearing.
2. The appeal was heard by virtue of Rule 11(1) of the Valuation Tribunal Rules (Northern Ireland) 2007 which states “*an appeal may be disposed of on the basis of written representations of all parties have given their consent in writing.*” Both parties have given their consent.
3. The valuation of the property that is the subject of this appeal is 92 Annvale Road, Aughnagurgan, Keady BT60 2RY (“the subject property”). The subject property is a Pre-1919 detached cottage with a Gross External Area (GEA) of 170 m² situated within the yard of a working farm and surrounded by the associated farm buildings. Prior to April 2017, it was recorded in the valuation list as being an agricultural dwelling and therefore had been awarded an Agricultural Allowance of 20% which adjusted the

assessed Capital Valuation (CV) of £135,000 to £108,000. In April 2017, however, the Agricultural Allowance was removed, as the property was no longer occupied in connection with operating and directing an agricultural activity, and so the CV was restored to £135,000. Following an inspection of the subject property on 12 May 2017, a Valuation Certificate, dated 18 May 2017, reduced the CV to £120,000.

4. The Appellant, by notice of appeal dated 9 June 2017, appealed against the decision of the Commissioner of Valuation of 18 May 2017, effective from the 1 April 2017. The following documents have been considered by the Tribunal:-
 - (a) The Notice of Appeal against the valuation for rating purposes (Form 3) dated 9 June 2017;
 - (b) Valuation Certificate issued on 18 May 2017 and
 - (c) Presentation of Evidence by Mr Gordon Bingham, on behalf of for the Commissioner, including Schedule of Comparisons at Appendix 1 dated 22 August 2017.

The Law

5. The statutory provisions are set out in the Rates (Northern Ireland) Order 1977 (“the 1977 Order”) as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (the 2006 Order”). Article 54 of the 1977 Order enables a person to appeal to this Tribunal against the decision of the Commissioner regarding the capital value.
6. Schedule 12 of the 1977 Order, as amended, states as follows:

“7(1) subject to the provisions of this schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in Paragraphs 9-15, the hereditament might reasonably expected to realise if it had been sold on the open market by a willing seller on the relevant CV date.

(2) in estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that

valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised. ...

(4) in sub-paragraph (1) “relevant to CV date” means 1st January 2005 or such date as the Department may substitute by order made subject to a negative resolution for the purposes of a new CV list.”

(7) Article 54(3) of the 1977 Order provides that on appeal any valuation shown in a valuation list shall be deemed to be correct until the contrary is shown. Thus, any Appellant must successfully challenge and displace the presumption of correctness otherwise the appeal will not be successful.

Also of relevance in this appeal is Schedule 12 Part II – Farmhouses

“1) The net annual value of a house occupied in connection with agricultural land or a fish farm and used as the dwelling of a person –

(a) Whose primary occupation is the carrying on or directing of agricultural or, as the case may be, fish farming operations on that land; or

(b) Who is employed in agricultural or; as the case may be fish farming operations on that land in the service of the occupier thereof and is entitled, whether as tenant or otherwise, so to use the house only while so employed, shall so long as the house is so occupied and used, be estimated by reference to the rent at which the house might reasonably be expected to let from year to year if it could not be occupied and used otherwise than as foresaid.

2) The capital value of a house occupied and used as mentioned in paragraph 1 shall be estimated on the assumption (in addition to those mentioned in Part 1) that the house will always be so occupied and used.”

Representations of the Appellant

7. The Appellant, Mr Bain, in his Notice of Appeal against the valuation for rating purposes dated 9 June 2017, sought a reduction from £120,000 to £50,000 on the grounds that the valuation stated on the Valuation Certificate was “*extortionate*” and “*outrageous*” because of the age, location and state of repair of the subject property and for reasons already verbally and in writing given within the 28 day period in detail, which are set out by the Respondent in his Presentation of Evidence. On his Notice of

Appeal a strict reading of the amount would be £50-00 but the Tribunal note that the appellant has expressed the current valuation in similar arithmetical terms where he appears to refer to figures in round terms of thousands. The Tribunal note the appellant refers to the Valuation Certificate as £120-00 when the Valuation Certificate refers to £120,000.

Representations of the Respondent

8. Mr Bingham the Valuer for the Commissioner of Valuation sets out the history of the subject property as follows:

On 1 April 2007, the 6th Valuation List was published; the property had an unadjusted Capital Value (CV) of £135,000, but was in receipt of agricultural allowance (20%) making the original list entry, £108,000. The occupier was recorded as Robert Bain.

On 4 April 2017 a Certificate of Valuation was issued by the District Valuer, removing the agricultural allowance. This was because the property was no longer occupied by Robert Bain, but occupied by Mark Allister, from 4 October 2015. Before this certificate was issued, forms were sent to Mark Allister, requesting information regarding the agricultural status of the occupier and these forms were not returned. The CV was amended from £108,000 to £135,000. This decision was appealed to the Commissioner of Valuation

On 18 May 2017 a Certificate of Valuation was issued by the Commissioner of Valuation, amending the CV from £135,000 to £120,000. The comparable evidence supported the CV assessment of £135,000, but an additional 10% allowance was granted to reflect the fact that the property was surrounded by a working farm. As the occupier is not a farmer, agricultural allowance was not granted. This decision has been appealed to the Northern Ireland Valuation Tribunal.

9. Mr Bingham then described how he met with the Appellant, Robert Bain, the property owner and established that he was a full time farmer, but did not reside at this property. He established that his main residence is 97 Annvale Road, Keady. Mr

Bingham explained that Mr Bain stated that his mother had resided at the subject property, but after she died, his daughter and her husband (Mark Allister) moved into the subject property whilst building their own house. Both Mr and Mrs Allister have full time jobs and are not involved in any agricultural activity at the farm.

10. Mr Bingham further established that there was no rent being charged on the property, although Mr Allister, is the agreed ratepayer. Mr Bingham stated that the Appellant also stated that he occasionally stayed at the property when farming activities dictate, such as when cows are calving but that Mark Allister is the rateable occupier, and as such, there is no entitlement to agricultural relief. Hence, no allowance has been applied to the CV of the property.
11. Mr Bingham further explained that the Appellant stated that he felt that the CV assessment did not reflect the current market value of the property. The Antecedent Valuation date for domestic properties is 1 January 2005. The current market value of the property is not relevant to the Capital Valuation assessment for rating purposes. When assessing the CV, The Rates (Northern Ireland) Order 1977 states in Schedule 12, Paragraph 7 (2) *"In estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised."* He stated that the subject property had therefore been valued by comparison to properties of a similar age and type in the locality.
12. With regard to the issue of repair raised by the Appellant, Mr Bingham commented that externally the property is in an average state of repair having regard to its age and character. The roof and structure of the building are sound. The windows are double glazed PVC and are in good repair as is the drainage and rainwater goods. Any minor repair issues, in Mr Bingham's view, were to be expected for the age and type of the property and considered to be in the nature of the general maintenance. The subject property does not differ in this respect from the comparables listed in the attached schedule. Therefore in the view of the valuer it would not be appropriate to make an adjustment to the CV to reflect external repair. Internally, the property is in below

average repair, having not been well maintained. The property is in need of general modernisation and redecoration. However, under Schedule 12 paragraph 12 (1) of The Rates (Northern Ireland) Order it states *"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."* Therefore there is a statutory assumption of average internal repair.

13. The Respondent referred the Tribunal to the case of *Patrick Nichol and The Commissioner of Valuation 33/14* heard by the NIVT in September 2015. In this case the Appellant challenged the CV assessment of £110,000 on the basis that the current market value was estimated at £35,000 to £45,000. The property had been vacant for approximately three years and did not benefit from central heating as the boiler was in need of repair. The NIVT dismissed the appeal, stating *"The assessment of the capital value is as of the 1 January 2005 and the current market value of the property is utterly irrelevant for that reason. The assumptions must be that the property is of an average state of internal repair and fit out and there is no discretion afforded to either the Respondent or the Lands Tribunal to vary this statutory assumption. The submission then as to the internal state of the property is irrelevant, as is the fact that the boiler requires repair."* On that basis, no allowance has been made to the subject property to reflect either current market value or internal repair.
14. In addition, although not raised by the Appellant, Mr Bingham considers it appropriate to grant an allowance to reflect the proximity of the subject property to a working farm. In a similar case heard by the NIVT in May 2017, *Rodney Clark and the Commissioner of Valuation (Case Reference 14/16)* the panel and the chairman of that Tribunal Mr Gibson, upheld the decision of the Commissioner of Valuation, that a 10% allowance adequately reflected the property's location within a working farm. As stated earlier, Agricultural Allowance has not been granted to the property as the occupier is not primarily engaged in agricultural operations. However, the house is situated in a working farmyard, which is still regularly used by the Appellant. Therefore a 10% end allowance has been applied to the CV assessment of £135,000 to reflect this fact.
15. Referring to comparable evidence, as noted in the schedule attached, Mr Bingham was of the opinion that a capital value of £135,000 was fair and reasonable in comparison to other properties. The application of a 10% end allowance adjusts this CV to £120,000.

The Respondent concluded his submissions stating that *“The valuation has been assessed in accordance with the provisions of the Rates (Northern Ireland) Order 1977. The CV as assessed (£120,000) is considered fair and reasonable in comparison to similar properties.”*

Decision of the Tribunal

16. The Appellant, Mr Bain, in his Notice of Appeal against the valuation for rating purposes dated 9 June 2017 seeks a reduction from £120,000 to £50,000 on the grounds that the valuation stated on the Valuation Certificate is *“extortionate”* and *“outrageous”* because of the age, location and state of repair of the subject property. The purpose of this Tribunal is to consider the evidence and apply the relevant law to the issues of CV. The valuation to the subject property has been assessed in accordance with the Rates (Northern Ireland) Order 1977.
17. The Tribunal has taken into account an important statutory presumption contained within the 1977 Order. Article 54(3) of the 1977 Order provides, *“On the appeal and this article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to correct until contrary is shown”*. It is therefore up to the Appellant in any case to challenge and to displace this presumption or perhaps for the Commissioner’s decision on appeal to be seen to be so manifestly incorrect that the Tribunal must take steps to rectify the situation.
18. In relation to the contention that the property is only worth £50,000 this ground of appeal can be dealt with summarily. As has been pointed out in numerous decisions of this Tribunal, the relevant date for assessment is 1 January 2005. The value of the property at the time the valuer attends the site or when the appeal is made or when the appeal is heard are all utterly irrelevant.
19. In order for an Agricultural Allowance to be granted, two criteria need to be met in accordance with -Schedule 12 Part II – ‘Farmhouses’
 - 1) The house needs to be occupied in connection with agricultural land and
 - 2) The occupier’s primary occupation is agricultural.

20. Mr Bain is a full time farmer. However, the house is not occupied in connection with agricultural land, nor is it a farmhouse. Mr Bain does not reside at this property. His main residence is 97 Annvale Road, Keady. He has stated that his mother had resided at the subject property, but after she died, his daughter and her husband (Mark Allister) moved into the subject whilst building their own house. Both Mr and Mrs Allister have full time jobs and are not involved in any agricultural activity at the farm. There is no rent being charged on the property, although Mr Allister, is the agreed ratepayer. The Appellant also stated that he occasionally stays at the property when farming activities dictate, such as when cows are calving. However, Mark Allister is the rateable occupier, and as such, there is no entitlement to agricultural relief. Hence, no allowance has been applied to the CV of the property.
21. Notwithstanding the bar to Agricultural Allowance applying, the expert valuer (although not raised by the Appellant) has considered the helpful judgment in the case of *Rodney Clark and the Commissioner of Valuation* (Case Reference 14/16) and observed that a 10% allowance was given in that case to adequately reflect the properties' location within a working farm. In this case Agricultural Allowance was correctly not granted to the property as the occupier is not primarily engaged in agricultural operations. However, the house is situated in a working farmyard, which is still regularly used by the Appellant. Therefore a 10% "end allowance" has been applied to the Capital Valuation assessment of £135,000 to reflect this fact and the Tribunal concurs with this approach.
22. In assessing the valuation of the property, the expert valuer has correctly considered properties of comparable nature. A schedule of comparable evidence was gathered to illustrate the Capital Value assessments of similar properties to the subject property (I refer to Schedules of Comparisons). These selected comparables demonstrate a strong relativity which supports the assessment the CV of the subject property (with a Habitable space of 170 m²), of £135,000, reduced to £120,000 with the said allowance. It is noted that 33 Annvale Road Keady (with a habitable space of 145 m²) has a CV of 125,000 reduced to £100,000 due to the 20% Agricultural allowance. The property situate at 103 Dundrum Road, Tassagh (with a Habitable space of 137 m²) has a CV of £110,000. The property situate at 95 Granemore Road Tassagh (with a habitable space of 189 m² and a garage of 31 m²) has a CV of £165,000.

23. In this case the Tribunal did not find that the Appellant had produced sufficient evidence to displace the statutory presumption that, “*any valuation shown in the valuation list with respect to a hereditament shall be deemed to be incorrect until the contrary is shown*”. The Tribunal’s unanimous decision is that the Commission for Valuation decision is correct and the Appellant’s appeal is dismissed accordingly.

Stephen Wright (Chairman of Northern Ireland Valuation Tribunal)

Date Decision Recorded in Register and issued to Parties: 1 February 2018