NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007 (AS AMENDED)

Case Ref No NIVT 26/18

BETWEEN:

JONATHAN AND SARAH O'CALLAGHAN – Appellant

and

COMMISSIONER FOR VALUATION FOR NORTHERN IRELAND - Respondent

Northern Ireland Valuation Tribunal

Chairman: Mr Keith Gibson B.L.

Members: Mr Chris Kenton FRICS and Ms Noreen Wright

Date of hearing: 26th August 2020

DECISION

Introduction

1. This is an appeal by the Appellants in respect of the assessment of the capital valuation of the Appellants' property at 25 Monument Road, Hillsborough, BT26 6HT. The appeal is made pursuant to the Rates (Northern Ireland) Order 1977.

2. The relevant capital valuation date is the 1st January 2005 (see Schedule 12, paragraph 7(4) of the Rates Order). The other point in time which is often referenced in the context of these appeals is the 1st April 2007 which is the date upon which the valuation lists for domestic properties became operative. What this means, in practice, is that for the purposes of any appeal before this Tribunal, rather nebulously, the Tribunal can only consider whether or not the capital valuation was correct as of the 1st January 2005.

3. Self-evidently, this can cause a number of problems both for homeowners and valuers alike. The most obvious practical difficulty is in respect of properties which are built or constructed or substantially renovated post the 1st January 2005. In that instance the valuer, using his or her skill and expertise, must try and assess the value of the new property with reference to similar properties already built and valued earlier (those similar properties are often referred to in valuation term as "the comparables").

4. For homeowners, they face two significant problems; one is an evidential problem; the other, a legal one (what is known as the 'tone of the list' statutory presumption). In respect of the evidential problem, homeowners have to seek to establish to the satisfaction of the Tribunal (and the onus and burden is on them as Appellants) that other properties sold or agreed for sale at the relevant time (the 1st January 2005)

demonstrate that their 1st January 2005 valuation was wrong. Gathering that evidence is often very difficult, even for professional valuers.

5. The second difficulty faced by Appellants is that contained at paragraph 7 of Schedule 12 to the Rates Order which states, in a fine example of legalese;

   "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 hereditaments whose capital value has been revised."

6. This is what valuers know as the "*tone of the list"* or the "*tone of the comparables*". What this means in practice is that if within a relatively short period of time in a particular area (which in an urban setting, might well stretch only to one street, but in a rural setting may stretch to many miles) there are no or limited challenges to a number of valuations or, if challenges are abandoned or ultimately unsuccessful, then a point can be reached within a relatively short space of time although it would have to be said that a reliable tone of the list for the hereditaments (basically the buildings) in a location or category has been settled - see **A-Wear Limited –v- Commissioner of Valuation VR/3/2001**.

7. Whilst the presumption, as it pertains to the tone of the list, is not to be followed slavishly, if it can be established to the Tribunal's satisfaction that the tone has settled and has been settled for a considerable period of time (measured in years not months) then the prospects of displacing the presumption are significantly diminished.

The Appellants' Appeal

8. The starting point in valuing any property for the purposes of the Rates Order is a number of assumptions which the Valuer and indeed all parties to the appeal must make in respect of the subject property. They are contained in Schedule 12, paragraphs 9 – 15 of the Rates (Northern Ireland) Order 1977 and may be summarised as follows:

   (i) That the property, if sold, was to be sold with vacant possession (i.e. no sitting tenants or difficulty in obtaining possession).
   (ii) That title to the property is by way of Fee Simple or by way of long Lease (i.e. that the value to the property is not diminished by the fact that the title is in some way defective).
   (iii) That the property is sold free from any rent charge or other encumbrance (again that the title is not diminished in value by some sort of obligation on the owner).
   (iv) That the property is in an average state of internal repair and fit-out, having regard to the age and character of the property and its location (this is more nuanced qualification – if a property has a serious defect, which is something distinct from similar properties of similar age and character then the assumption can be displaced).
   (v) That the property is in the same circumstances it would have been expected to have been in on the relevant date, defined as the 1st April 2007 (i.e. that there

has been no material change in the property from the 1st January 2005 to the 1st April 2007).

(vi) That Development value is not to be taken into account (i.e. planning hope is to be ignored).

9. What this means in practice is that both the Valuer on behalf of the Respondent and indeed the Tribunal make a number of assumptions about all properties in the valuation list in an attempt to ensure conformity. Those assumptions can however be displaced.

10. The Appellants considered that the actual valuation should be £350,000 and their grounds for appeal, as set out in their correspondence of the 24th October 2018 (following admission into the valuation list on the 4th October 2018), may be summarised as follows:

i. That their property was affected by a nuisance, namely the installation of a dome covering two local tennis courts.
ii. That recent valuations for properties in the surrounding area did not sit easily with their capital valuation (the Appellants identifying 19 Farriers Green, 17 Farriers Green and 8 Royal Park Lane).
iii. That comparables identified by the Appellants, namely 21 Monument Road and 2 Monument Park which had been similarly renovated and extended and that this materially affected their own capital valuation.
iv. That other comparables in relation to size materially affected the current valuation.
v. That the property was not a full two storey detached house.

11. Dealing with each of the grounds of appeal seriatim:

Ground i: The tennis courts:

12. The 2 tennis courts have a large air dome covering which is erected seasonally to provide cover for two tennis courts. The Appellants claim that this, in effect, (paraphrasing) constitutes a nuisance. The evidence from LPS is that the dome is seasonal in nature i.e. the dome is taken down during what constitutes, for Northern Ireland, the summer months.

13. First and foremost, there is absolutely no doubt that, in principle, the Tribunal has the power to vary downward a valuation because of a nuisance. Difficult issues can arise when the nuisance is temporary - see, for example, **Stafford –v- Commissioner of Valuation** [2011] 6 BNIL 76 in Northern Ireland and **Shepherd (VO)'s Appeal** [1978] 1 GLR 180 in England and Wales where the Lands Tribunal in England and Wales held that only if a nuisance existed beyond twelve months would it be considered to be of sufficient duration so as to effect valuation.

14. The Tribunal rejects this ground for a host of reasons including:

a) The fact that it is clearly temporary – any valuer would have no way of knowing if the nuisance was brought to an end or substantially lessened.

b) The lack of any evidence put forward by the Appellants. No reports or third party evidence were produced either to 1) establish the nature and severity of the nuisance by way of light pollution or otherwise or 2) demonstrate the effect it may have on the value of the property. The Appellants themselves did not give evidence and so the Tribunal was left with, what were effectively, allegations of nuisance without any supporting evidence.
c) The tone of the list. This is dealt with in greater detail below, but there is no evidence that any of the properties in the surrounding environs of the dome have had their capital valuations reduced.

Ground ii: The market valuation of the surrounding properties:

15. This ground of appeal can be summarily dismissed. The only relevant valuation date is the 1st January 2005. Evidence of capital or market values in or about that time will of course be relevant but recent contemporaneous valuations are utterly irrelevant.

Grounds iii and iv – Other comparables.

16. The Appellants identified a total of five comparables, namely:

a) 21 Monument Road, which is 182m² with a capital valuation of £270,000 (the subject property is 285m² with a capital value of £400,000).
b) 2 Monument Park, which is 215m² with a capital valuation of £320,000.
c) 9 Walkers Farm, which is 287m² with a capital valuation of £390,000.
d) 5 Walkers Farm, which is 385.7m² with a capital valuation of £400,000.
e) 7 Monument Park, which is 260m² with a capital valuation of £320,000.

17. Pausing here, the subject property is one which was refurbished in or around 2014 and located one mile from Hillsborough with a habitable space of 285m² and a garage of 27m². By way of comparison, LPS identified 4 comparables, which we have numbered consecutively, namely:

f) 3 Park Street, a two storey house which is 276.3m² along with a garage of 38m² with a capital value of £420,000.
g) 1 Oaklands, which is 265.48m² with a garage of 36.7m² and a capital value of £380,000.
h) 74 Carnreagh which is 257m² with a garage of 39m² and a capital value of £350,000.
i) 13 Dromore Road which is 263m² with a garage of 38m² and a capital value of £400,000.

18. In identifying an appropriate comparable, the principles of comparable evidence were helpfully identified by Tribunal Member Mr Kenton FRICS. In compiling comparable evidence the compiler should ensure that the list of comparables is:

a) Comprehensive (ideally a number of comparables rather than a single transaction or event).
b) Physically very similar (ideally identical to the property being valued).
c) Timeous, i.e. of the relevant time. Quite obviously, if a valuer is valuing a property for the purpose of private treaty sale today then property sales within the last number of months are considerably more relevant than property sales three to four years ago.

As set out above, the relevant time is the 1st January 2005 for the purposes of this appeal.

d) Sales or transfers at an arm's length transaction, i.e. property sales at public auction or properly marketed private treaty sales. By way of example, sales to family or friends or sales that have some added incentive or distorting effect are less relevant.
e) Verifiable (the most easy and obvious example is sales which are recorded in Land Registry, where the amount paid is recorded).

19. Keeping a hold of those principles with the extensive renovations carried out by the Appellants, the other property situate in Monument Road (being of a different size) and the ones situate in Walkers Farm (being a considerable distance away) were not considered terribly useful. The comparable identified by the Appellants at 7 Monument Park was, however, somewhat useful insofar as it was smaller than the Appellants' property but it had a value of £320,000.

20. The other comparables which the Tribunal found useful were those of the Respondent, at 3 Park Street and 13 Dromore Road. They were all properties of a similar size, albeit with slightly smaller internal space but larger garages. To the Tribunal's mind, these properties, which had a value of £420,000 and £400,000 respectively, indicated that the value of the Appellants' property is properly the £400,000 assessed. The tone of the list appears well settled and there is nothing whatsoever to suggest that the capital value of £400,000 is out of line with comparable properties in the locality.

Ground v:

21. Ground 5 is to the effect that there should be some reduction in the valuation because the property is not a full two storey detached house. The response by LPS is to indicate that all of the areas which are included are in excess of 1.5m in head height. Whilst therefore the Appellants may regard their property as a chalet type bungalow, there is absolutely no doubt that it encompasses two storeys, sufficient for residential use.

22. This is a design feature which the Tribunal simply cannot take account of given the statutory assumptions referred to above at para 8 of this decision. In any event, even if the Tribunal was wrong there is absolutely no evidence laid before the Tribunal to convince it that there should be some reduction in value because of the distinction between a two storey and 1.5 storey property.

Conclusion

23. It is the unanimous decision of the Tribunal that the appeal be rejected.

Signed: Mr Keith Gibson – Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 23 September 2020