

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

CASE REFERENCE NUMBER: NIVT 11/17

**AARON CUMISKEY – APPELLANT
AND
COMMISSIONER OF VALUATION FOR NI – RESPONDENT**

Northern Ireland Valuation Tribunal

Date of hearing: 18th April 2018

CHAIRMAN: Stephen Wright

MEMBERS: Mr Eric Spence MRICS and Mr Peter Somerville

DECISION

The Tribunal's unanimous decision is that the Appellant's appeal is not allowed and the Capital Valuation assessed on, 5 Carran Close, Rathkeelan, Crossmaglen County Armagh BT35 9NJ of £125,000 is upheld.

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.*"

3. The property that is the subject of this appeal is situated at 5 Carran Close, Rathkeelan, Crossmaglen, County Armagh BT35 9NJ. The subject property is a 1970's bungalow, situated in a small development of eight similar houses, close to the town centre of Crossmaglen. It is of brick construction, with pitched tiled roof and an enclosed garden to the rear.
4. The appellant, by notice of appeal dated the 18th August 2017, appealed against the decision of the Commissioner of Valuation issued on the 11th August 2017 which states that the valuation should be £125,000, stating that the subject property valuation, as assessed, is considered fair and reasonable in comparison to similar properties.
5. The following documents have been considered by us:-
 - a. The Notice of Appeal against the valuation for rating purposes (Form 3) dated the 18th August 2017;
 - b. Valuation Certificate issued on the 11th August 2017;
 - c. Presentation of Evidence by the Commissioner of Valuation dated 4th October 2017 by Mr Gordon Bingham MRICS including schedule of comparisons, photographs of the subject property, (Appendix 1) a map showing the location of the subject property in relation to comparable properties (Appendix 2) and a Survey of the subject property (Appendix 3);
 - d. Response by the Appellant Mr Cumiskey to the Presentation of Evidence dated the 17th October 2017;
 - e. Response by the Respondents to the Appellants comments dated 26th October 2017;
 - f. Letter from Mr Cumiskey to the Tribunal Centre Hearing Centre dated 22nd December 2017;
 - g. Email from Gail Bennet to Roberta Rogers dated 8th January 2018 and
 - h. Note of Consent from Mr Cumiskey for matter to be disposed by written representations dated 14th January 2018 and Letters from the NI Valuation Tribunal dated 23rd January 2018 confirming the dates of the hearings.

The Law

6. 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 on appeal regarding the capital value.

7. 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 capital valuation 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 capital valuation 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 capital valuation 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.

Background to the Appeal

8.1 Mr Bingham for the Commissioner of Valuation first sets out of the history of the subject property.

8.2 On 1st April 2007 the current Domestic Valuation List came into effect. At this date, the subject property had a Capital Value (CV) of £105,000. This CV was based on a Gross External Area (GEA) of 84m² plus a garage of 29m².

8.3 On 27th July 2017 a Certificate of Valuation was issued by the District Valuer (DV) increasing the CV to £125,000 with the change being effective from 1st April 2018. The change was due to alterations carried out on the property being effective from 1st April 2018 namely conversion of the integral garage into habitable space. The revised CV is based on a GEA of 114.6m² with a garage no longer included. This decision was appealed to the Commissioner for Valuation (COV).

8.4 On 11th August 2017 a Certificate of Valuation was issued by the COV confirming the CV of £125,000. Mr Bingham inspected the property on 8th August

2017 and confirmed that the survey of the property was correct. This decision is now the subject of the appeal.

Appellant's Representations

8.5 Whilst appreciating that the conversion of the garage to a kitchen would increase the CV of the subject property, Mr Cumiskey is seeking a reduction in CV to £110,000. The Appellant makes the following points in his Notice of Appeal –

- A 25% increase is arbitrary and unreasonable.
- The house remains the smallest in the cul-de-sac of 8 Bungalows.
- The Appellant's Fathers house next door is much larger with a large garden and has a valuation of £125,000.
- A fairer increase in valuation from £100,000 to £110,000 would take into account the changes made to the subject property and that the overall area of the subject property has not changed.
- The valuation certificate actually indicates that there has been no increase when in fact the previous valuation was £100,000.
- The Valuation of 25% is very disproportionate as there has been no overall change on the size of the house.

8.6 The Appellant, Mr Cumiskey, further elaborates his grounds of Appeal in his Response to the Presentation of Evidence dated 17th October 2017. Namely:-

- The Appellant asserts that that the increase in the CV of the house by 20% is exorbitant due to a modern conversion carried out.
- The lack /loss of a garage has not been mentioned. This fact should have an effect on the CV.
- Mr Bingham states that No 7 Carran Close, which was valued as having the same Habitable Space (115m²), was valued at £115,000 but based on it having a garage also.
- Consideration of the loss of the amenity, in that all comparables have both a garage and/or driveway, which the appellant states he has lost.
- There is a marginal differential in the Departmental measurements in that the conversion of garage 29m² and the living space at 84m² totals 113m² not 115m² in valuation.

- Whilst the closest comparator, no 7 is under review, the garage has been in place since well before 2007.

It is noted in the Presentation of Evidence that Mr Bingham refers to a ground of appeal as being that the purchase price of the house (4 years ago) was £55,000 and even then they believed that they were paying too much in relation to rates. Whilst this comment apparently emanated from the Appellant within the process of the valuation of the subject property it is noted that Mr Cumiskey states in his reply to the presentation of evidence “*Contrary to Mr Bingham’s statement that I am basing my argument upon the fact that we purchased it for much less, I am basing it on a number of factors*”, (which are set out above). It is noted that this ground is not specifically mentioned in his Notice of Appeal, the Tribunal however for the sake of completeness will consider the representations made by the Respondent in respect of the stated grounds of appeal, and the case referred to of Gerard *Heaney v Commissioner of Valuation Ref 74/12.*

Representations of the Respondents

9.1 On 18th August 2017 Mr Cumiskey appealed the Commissioner of Valuation’s decision to the Northern Ireland Valuation Tribunal.

9.2 Mr Bingham for the Commission for Valuation makes the following representations:-

9.3 The Appellant bought the subject property in April 2013 for £55,000, and subsequently carried out structural alterations, converting the garage into living accommodation. A representative of the DV inspected the property on 25th May 2017 and noted that the GEA had increased from 84m² to 114.6m² and that there was no longer a garage associated with the property. As a result of these alterations the CV was revised from £105,000 to £125,000. On 8th August 2017 Mr Bingham inspected the property and confirmed that the survey of the property was correct.

9.4 The Capital Value has been assessed in accordance with the Rates (Northern Ireland) Order 1977. Schedule 12 Paragraph 7 defines Capital Value as “... *the amount which on assumptions mentioned in Paragraphs 9 to 15, the hereditament might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date.*” The relevant capital valuation date in the current case is 1st January 2005.

9.5 Mr Bingham refers to Schedule 12, Paragraph 7(2) of the Rates (NI) Order 1977 which directs that in assessing the Capital Values of a domestic property for rating purposes, “*regard shall be had to the Capital Valuation in the Valuation List of comparable hereditaments in the same state and circumstances*”. This is known as the “*Tone of the List*” and in essence confirms that comparability is a cornerstone of the rating system. The Comparability of Rating Hereditament was described in the case of *Dawkins (VO) v Ash Brothers and Heaton (1969) 2 A C336* in which Lord Pearce stated “*Rating seeks a standard by which every hereditament in this country can be measured in relation to every other hereditament. It is not seeking to establish the true value of any particular hereditament, but rather its value in comparison with the respective values of the rest.*”

9.6 The correct method of valuation is by comparisons with other assessments for rating purposes. The Appellant is basing their argument upon the fact that the property was purchased in 2013 for £55,000. A similar case was heard by the NIVT in *Gerard Heaney v Commissioner of Valuation Ref 74/12.* In this case the appellant argued “that it was simply unfair to value the property at 2005 levels”. The Tribunal held that “Land Property Services and the Northern Ireland Valuation Tribunal are required to assess the valuation properties as on the 1 January 2005 and upon no other date.”

9.7 Mr Bingham, in reviewing the CV of 5 Carron Close, considered the CV assessments of the seven other dwellings located in Carran Close. These are 1970’s bungalows, similar in style and size as the subject property. In particular numbers 7 Carran Close (GEA 115m², Garage 25m² CV £115,000), 4 Carran Close (GEA 102m² Garage 24m²) 6 Carran Close (GEA 99m², Garage 24m², CV £115,000), 2 Carran Close (GEA 105m², Garage 24m², CV £120,000) and concludes for reasons set out in his Presentation of Evidence that based on the comparable evidence that the subject property CV at £125,000 is considered fair and reasonable.

9.8 Mr Bingham in his response answers the Appellants observations dated 26th October 2017 as follows:

1. The Appellant asserts that that the increase in the CV of the house by 20% is exorbitant due to a modern conversion carried out.

The capital value has been reviewed to take account of the increased habitable space by reference to comparable properties. As detailed in the Presentation of Evidence.

2. The lack /loss of a garage has not been mentioned. This fact should have an effect on the CV.

The loss of the garage has been reflected in the CV assessment and also mentioned in paragraph 2 page 5 of the Presentation of Evidence “Carried out structural alterations, converting the garage into living accommodation. Also the list description was amended from house outbuilding garden to “house garden” The outbuilding previously referred to being the garage.

3. Mr Bingham states that Number 7 Carran Close, which was valued as having the same Habitable Space (115m²), was valued at £115,000 but based on it having a garage also.

Number 7 Carran Close was incorrectly noted as having a habitable space of 115m² the survey details the property as being 105m² (prior to recent alterations). As stated at page 6 of the POE “7 Carran Close is a similar house type as subject. The garage has been converted into living accommodation, similar to the subject. A case for revision is currently listed to the District Valuer.” This revision has now been completed and the CV has now been amended to £125, 000, in tone with the subject property.

4. Consider loss of the amenity, in that all comparables have both a garage and/or driveway, which the Appellant states he has lost.

As stated at 2 (above), the loss of a garage has been reflected in the CV, the driveway of the property has remained unchanged.

5 There is a marginal differential in the Departmental measurements in that the conversion of garage 29m² and the living space at 84m² totals 113m² not 115m² in valuation.

Such a minor difference in would not impact on the CV assessment.

6. Whilst the closest comparator, number 7 is under review, the garage is in place since well before 2007.

It is unfortunate that LPS were not aware of this alteration and therefore revision was not carried out at an earlier date, however this has no bearing on the CV assessment.

Decision of the Tribunal

10. The Appellant’s case to the Tribunal is that the Capital Value assessment of the valuation of the property of £125,000 should be £110,000.

11. The purpose of the Tribunal is to consider the evidence and apply the relevant law to the issue of capital valuation. The valuation to the subject property has been

assessed in accordance with the legislation contained in the Rates (Northern Ireland) Order 1977. Schedule 12 Paragraph 7 as set out above at paragraphs 6 and 7 of this Decision.

12. 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.

13. Schedule 12 of the 1977 Order requires that in cases of revision of a Valuation List *“regard shall be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances.”* A schedule of comparable evidence was gathered to illustrate the Capital Value assessments of similar properties to the subject property (I refer to Appendix 2). These selected comparables demonstrate a strong relativity which supports the assessment of £125,000, which supports the valuation of the subject property.

14. It is noted that a Certificate of Valuation was issued by the District Valuer (DV) increasing the CV of the subject property, 5 Carron Close, to £125,000. The change was due to alterations carried out on the property, converting the integral garage into habitable space. The revised CV is based on a GEA of 1146m² with a garage no longer included considered.

The CV assessments of the seven other dwellings located in Carran Close which are 1970's bungalows, similar in style and size as the subject property. In particular, number 7 Carran Close, (with a corrected GEA 105m², Garage 25m²) has a CV of £115,000, number 4 Carran Close (with GEA 102m², a Garage 24m²) has a CV of £120,000, number 6 Carran Close (with a GEA 99m² a Garage 24m²) has a CV of £115,000, number 2 Carran Close (with a GEA 105m², Garage 24m²) has a CV £120,000. These comparators demonstrate that the subject property comes within the *“Tone of the List”* It is noted that whilst number 7 Carran Close was incorrectly noted as having a habitable space of 115m² the survey details the property as being 105m² (prior to recent alterations). As stated at page 6 of the Presentation of Evidence *“7 Carran Close is a similar house type as subject. The garage has been converted into living accommodation, similar to the subject. This revision has now been completed and the CV has been amended to £125,000, thus clearly bringing the subject property within the tone of the subject property as it has less habitable area than the subject property”*. The Tribunal also conclude that the

loss of the garage has been reflected in the CV assessment as is mentioned in paragraph 2, page 5 of the Presentation of Evidence.

15. The Tribunal also finds that the assessment of the Capital Valuation was correctly assessed according to the Statutory Assumptions 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”). The 1977 Order was substantially amended to allow for the valuation of dwelling houses and certain other hereditaments on the basis of their capital value. Article 7 (4) of the 2006 Order states that the “relevant capital valuation” is 1st January 2005 or such date as the Department may substitute by order made. By reason of this legislation both the Land & Property Services and the Northern Ireland Valuation Tribunal are required by law to assess the valuation of properties as on the 1st January 2005 and upon no other date.as clearly stated in Gerard *Heaney v Commissioner of Valuation Ref 74/12.* Capital Valuation is based on the correct application of the statutory assumptions and not the current Market Value of a property.

16. The Tribunal’s unanimous decision is that the Appellant’s appeal is not allowed and the Capital Valuation assessed on 5 Carran Close, Rathkeelan, Crossmaglen, and County Armagh BT35 9NJ of £125,000 is correct.

Signed: Mr Stephen Wright, Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to all parties: 6th September 2018