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

Case Reference: 21/16

MR & MRS JAMES CUNNINGHAM - APPELLANTS

-and-

THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

26 October 2018

Chairman - Mr Stephen Wright B.L

Members – Mr Christopher Kenton FRICS: Ms Noreen Wright

Review Hearing

1 On the 30th January 2018, this Tribunal issued a decision in respect of the Appellants' appeal against the assessment of the Capital Value (CV) of their property situated at 64 Ballymageogh Road Kilkeel BT34 4SX (The subject property) following an oral hearing on the 10th January 2018. The appeal was not allowed and both parties notified of the decision. Ms Bennett represented the Commissioner of Valuation Mrs Ciara Cunningham represented the Appellants.

2 After a hearing on the 10th January 2018, the Tribunal dismissed the appeal and confirmed the capital value of the property shown at £270,000. The written decision of the Tribunal issued to the parties on the 30th January 2018.

3 In making this decision the Tribunal noted in their decision that on the 20th October 2016 the District Valuers (DV's) decision was appealed to the Commissioner of Valuation (COV). The property was inspected by Edel Mackin MRICS on behalf of the COV. Ms Mackin who recommended a reduction in CV from £300,000 to £270,000 in line with comparable properties in the area.

4 On the 16th February 2018, the Appellants initially Appealed for leave to Appeal but subsequently indicated that they wanted this Tribunal to review the decision pursuant to

Rule 21 of the Valuation Tribunal Rules (Northern Ireland) 2007. In accordance with Rule 21(4), the parties have an opportunity to be heard in any application for review pursuant to Rule 21. The Appellants wished to be heard orally and the Tribunal acceded to their request.

THE LAW

5 Rule 21 provides;

Review

21. — (1) If, on the application of a party or on 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; or

(b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented; 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; or

(d) otherwise the interests of justice require, the Valuation Tribunal may review the relevant decision.

6 In regard to this review I am grateful for the observations of Mr Gibson Legal Chairman of the NIVT who comments in the review case of *Galbraith v COV NIVT Ref: 42/15.The power or ability to request a review is different from the appeal to the Lands Tribunal, pursuant to Article 54(a) of the Rates (NI) Order 1977 (as amended*). In relation to the four grounds (a) to (d) referred to in Rule 21, the ground contained in paragraph (b) was acknowledged to be irrelevant.

7 In Categorising this request for review it appears that the appellant request for review can be categorised under three headings:-

(i) The decision was wrong because of errors

(ii) There is new evidence, to which the decision relates

(iii) The Review is required in the interests of justice

8 Despite the seeming restriction placed on the appellant to just three of the four grounds available, the Tribunal considered the appellant's review in the context of Rule 21 as a whole.

9 At this point it is worth indicating that the review procedure is not intended to supplant the appeal procedure to the Lands Tribunal and the review 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.

Rule 21 (1)(a)

10 Mr Gibson further commented in the case *Galbraith v COV NIVT REF:42/15.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.*

11 The material before the Tribunal that was considered.

(i) The original case papers in the matter of James Cunningham v COV for case heard on the 10th January 2018.

(ii) The decision of James Cunningham v COV for case heard issued on the on the 18th January 2018.

(iii) Letter dated 30th January 2018 letter enclosing Tribunals decision of the 10th January 2018 setting out the options for a review and appeal.

(iv) Email dated 16th February to NIVT requesting President of the NIVT for leave to Appeal

(v) Email dated 21st February 2018 from the secretary of the NIVT.

(vi) Letter from NIVT dated 29th March 2018 seeking clarification whether it was a review of the decision or a request to the President of the Tribunal for leave to appeal without a review application.

(vii) Email from Mrs Cunningham dated 11th April 2018 seeking clarification on the difference between review of the decision or for a request to the President of the Tribunal for leave to appeal

(viii) Letter from the NIVT dated 1st May 2018 setting out the options in full for a review of the decision or for a request to the President of the Tribunal for leave to appeal

(ix) Email from Mrs Cunningham dated 10th May 2018 confirming they wanted a review of the decision whilst reserving the right of appeal to the LANDS Tribunal.

(x) Email from NIVT to COV 22nd May 2018 indicating the ground of appeal of the appellant.

(xi) Response of the COV to email dated 22nd May 2018.

(xii) Email interchange between NIVT and Mrs Cunningham re difficulty with COV responses and attachment dated 30th May and 12th June 2018.

(xiii) Email from Mrs Cunningham of the 12th June 2018 re a holding reply on the response by the COV.

(xiv) Email of the 18th June 2018 from Mrs Cunningham to NIVT commenting on COV response dated 22nd May 2018 making comments on the responses.

(xv) Letter from NIVT dated 14th August 2018 confirming Friday 26th October 2018 as the date of the Hearing.

(xvi) Email from Mrs Cunningham dated 25th October 2018 referring to previously submitted photos of an "in progress" build that obstructs there view even further and attached photos that show their view now that the house is finished. The appellants allege that they only have this distant sea view from one room into their house and that on this basis they do not feel this warrants the sea view status.

(xvii) Reply by NIVT to the email dated 25th October 2018

12.1 Prior to the commencement of the review hearing the appellants and the Tribunal raised a number of preliminary matters.

12.2 The appellant at the outset of the review sought to introduce new evidence at very short notice namely 3 photographs of a house being built opposite their property. This was admitted with no objections from the Respondent. The appellant explained the said house had been completed since the original hearing (reference having being made to a previous photograph submitted that showed the early beginnings of a house). The appellant stated that these three photographs demonstrate that they only have a distant view of the sea from one room of the subject property and in their opinion does not warrant the "sea view status", the Tribunal admitted the photographs into evidence.

12.3 Prior to the commencement of the proceedings the Tribunal referred to a letter from the NIVT dated 14th December 2016 with an enclosed leaflet "*Evidence submitted to the NI Valuation Tribunal"*; both parties to the review hearing confirmed that they had received a copy of the letter and had no objections to the leaflet being put into evidence.

12.4 The Tribunal inquired about the reference by Mr and Mrs Cunningham to the property situated at number 73 Ballymageogh Road, Kilkeel and inquired was there any evidence in respect of this property being adduced at the Review hearing in terms of documentation. The respondent replied there was not, even though the appellants were aware of the existence of the evidence at the original hearing. The appellant indicated that they were extremely busy and did not appreciate how important it was. The Tribunal inquired further as to whether there was any documentary "proof" of the details of 73 Ballymageogh Road Kilkeel. The appellant apologised that no photographs or documentation had been obtained for this hearing.

Appellants Representations.

13.1 The appellant at the outset said that they were disappointed by the original decision of the Tribunal and in relation to this review refereed to the email of the 16th February 2018 setting out the reasons for the appeal/review of the decision. These comments can be categorised under three potential legal grounds for the review. The following is a summary of both the written and oral evidence at the Tribunal.

The Decision was wrong because new evidence, to which the decision relates, has become available.

13.2 In this matter the appellant in the grounds of appeal for the rehearing of this matter has referred to the property situate at No73 Ballymageogh Road Kilkeel which she explains in her view is a favourable comparable property. The appellants further, refer to photographs of an "in progress" build that obstructs the view of the subject property. On the 23rd October 2018, one day prior to this rehearing the appellant sought to introduce further evidence of photographs that show the view that they have since the house has been finished. The appellant states that now, they only have a distant sea view from one room in their house and do not feel this warrants the "sea view status" given to their property.

13.3 **The Decision was wrong because of errors -** *The appellant refers to the following matter.*

(i) The appellant referred to page 8, para 26, of the decision and states I would like the property I referred to (No73 Ballymageogh Road Kilkeel) to be fully

investigated. The appellant refers to No 64 Ballymageogh Road Kilkeel (namely the subject property) we were rated at £300,000 for 219 m^2 (value £1,369 per m^2) - Rates £2,360, *then amended to £270,000 for 226m2 (value £1,194 per m^2) - Rates £2,124

(ii) No73 Ballymageogh Road Kilkeel was rated at £225,000 for 229 m^2 (value £982 per m^2) Rates £1,770 No 73 is roughly the same m^2 as ours but valued at £45,000 less than is. It is a new build like ours with a limited sea view

13.4 Mr Kenton, Valuation member of the Tribunal explained the method of calculations enunciated in the original decision was not conducted on an arithmetic basis but on the tone of the list by considering other comparable properties. He further explained that there was a difference between the sales value of a property and the capital value which relates to the value to be attached to a property as it was in 2005 and the rates assessed theron. The appellant acknowledged that she now appreciated that the arithmetic method was not the correct one but she did not appreciate that at the time.

13.5 The appellant referred to No73 Ballymageogh Road Kilkeel that she stated was £225,000 for 229m^2 at a Capital Value of £225,000 she explained that the valuation was inconsistent with the value on the subject property. However she acknowledged that she did not have any documentary proof of this assertion.

13.6 The appellant further stated that she had talked with an estate agent who had thought the Capital Value of the subject property was too high. Again the appellant acknowledged that there was no report or any proof to establish this contention.

The Decision was wrong in the interests of justice

13.7 The appellants infers from their representations that the burden of proof on the appellant is not correct and further that they were not informed of the burden of proof as it related to presenting their case… The appellant refers to Page 13, para 41 of the original Decision, the appellant states *"we would have needed to have proved the Capital Value £270,000 was not correct. What does this mean? We should've had a value(r) with us No one ever mentioned."* The Appellant further made inferences that the CV was raised to create an income stream for the Council.

Respondents Representations

14.1 The respondent states at the outset of her representations of the review proceedings that the COV objected to a review on the grounds that the appeal has already been heard based on what Land and Property Service consider being the best comparable evidence. Ms Bennett also stated that this was a review of the decision made by the Tribunal against the decision of the COV which related to the decision of the District Valuer on the subject property .The property referred in the photographs were in her view irrelevant to this review. The photographs were offered as evidence as reducing the sea view of the subject property which would not have been known to the DV even if the property had just minor beginnings. Many properties can remain in this state and not proceed. It is only when they are built that such an assessment can be made. In that case the correct procedure is to ask, in light of changing circumstances for a revision by the DV on the subject property on its current Capital Value. Ms Bennett also emphasised that it was not the purpose of the COV to create an income stream in relation to higher rates but to assess the CV objectively in accordance with statutory criteria. The respondent referred to the appellants grounds of appeal and elaborated on in an email forwarded to the appellants on the 22nd May 2018 as follows:-

The Decision was wrong because new evidence, to which the decision relates, has become available

14.2 Notwithstanding the general grounds of objection to the outlined in paragraph *14.1* above to assist the Tribunal the respondent stated that in relation to the receipt of new evidence that the property situate at 73 Ballymageogh Road, Kilkeel is not considered to be comparable evidence as it is not in similar state and circumstances as the subject property. It is situated further along the Ballymageogh Road, and is orientated such as to not to be noted to benefit from 'Sea View Limited', nor is it noted as having the benefit of a garage. The District Valuer will review this CV assessment if deemed necessary.

The Decision was wrong because of errors

14.3 In responding in essence to the appellants implied assertion that there is an error in the decision the COV states:

With regards to devaluing comparables to a price/m^2 this was discussed at the original hearing. Ms Bennett refers to her representations recorded in the *Decision* at page 7 paragraph 24 of the namely:-

"Ms Bennett explained the basis of the calculation i.e. that it was not based on an arithmetical exercise but in accordance with the tone of the property and was calculated according to the statutory assumptions as set out in the case of Ashraf Ahmed v Commissioner of Valuation".

The decision was wrong in the interests of justice

14.4 In referring to the standard of proof Ms Bennett for the respondent states The Respondent refers to Page 13, para 41 of the Decision which refers to Article 54(4) of the Rates (Northern Ireland Order 1977 Order which states that:

"On an appeal under this Article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown".

14.5 The respondent explains that "a Capital Value appeal will not be upheld unless an appellant can successfully challenge the presumption of the correctness and satisfy the Tribunal that a Capital Value is not correct. The burden of proof is on the appellant to satisfy the Tribunal that the entry in the Valuation List is incorrect, by supplying any evidence that they believe to *be relevant.*"

Further Representations by the Appellant to the Response of the 22nd May 2018

14.6 The Appellants comments that in relation to the general defence in these proceedings that LPS object to a review on the grounds that the appeal has already been heard based on what LPS consider to be the best comparable evidence. The Appellants believe "*that LPS simply chose ones that suited them. Any we gave, LPS re-rated, at serious detriment to us with our neighbours".*

Further Representations by the Appellants to the Respondent to the representations of the of the 22nd May 2018

14.7 In relation to the specific responses to the appellant's grounds of appeal the COV comments as follows**:-**

New evidence, is available to which the decision relates and Error in the Decision

14.8 Number 64 Ballymageogh Road (the subject property) were rated at £300,000 for 219 m² (Value £1,369 per Square metre)-rates £2,360 then amended to £270,000 for 226 m² (value £1,194 per square metre)-rates £2,124.

14.9 Number 73 Ballymageogh Road was rated at £225,000 for 229 m squared (value £982 per metre squared)-rate £1,770.

14.10 Number 73 "is roughly the same square metres as ours but valued at £45,000 less than is. It is a new build like ours with a limited Seaview."…

14.11 In relation to the COV comments at paragraph 14.2 above that Number 73 Ballymageogh Road is not considered to be appropriate: - The appellant states "*We believe it is absolutely comparable evidence as it is in a similar state and circumstances as ours. Yes it is further along the road but absolutely has a sea view from at least one window of the house which is all we get a glimpse of the sea from, one window at the back of our house. You say the District Valuer will review CV, unbelievable, another one we have pointed out will be re- rated, more ill feeling with our neighbours. Also, on the point of the garage, an estate agent advised me that the garage adds approximately £10,000 to the value of a house, not £45,000.*

14.12 The appellant further states "*we have mentioned before and indeed submitted evidence before the hearing, a new house had been built behind, considerably blocking even more of the little sea view we did have. We have also had to put up with a year or more building work and a huge mound of soil, better described as a mountain, again blocking our view.*

Decision of the Tribunal

15.1 The purpose of this decision is to review the original decision issued on the 30th January 2018 in accordance with the Rates (Northern Ireland Order 1977 and the Valuation Tribunal Rules (Northern Ireland) 2007. The Tribunal do so under the following heads of Appeal.

(i) New evidence, is available to which the decision relates

15.2 Rule 21(c) of the Valuation Tribunal Rules (Northern Ireland) 2007 refers to a ground of appeal namely "*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..."

15.3 The Tribunal would make the following observations: This case prior to the full hearing on the 10th January 2018 had been adjourned on the 8th November and 6th December 2017 no additional evidence was furnished to the Tribunal during this period. Other material was submitted on the morning of the tribunal by the appellants, namely a photograph in which the Tribunal exercised its discretion to accept.

15.4 At paragraph 26 of the *decision* the Tribunal states "*Mrs Cunningham referred to another property that had not been introduced in any of the evidence submitted as being comparable but it was agreed that this could not be led in evidence*." It is the clear recollection of the Tribunal and the appellants that this property referred to was 73 Ballymageogh Road Kilkeel. This evidence having been excluded from the hearing the Tribunal find that the duty was on the appellant to produce this evidence to the Tribunal for the review hearing. This has not been done.

15.5 On the 21st February 2018 the appellants indicated that they were considering an appeal. There was then subsequent discussion with the NIVT as to the best way forward from the appellant's perspective. Both options were fully set out to the Appellants in a letter dated the 1st May 2018 from the secretary to the NIVT. On or about the 10th May 2018 the appellants confirmed that they wanted the case to be heard by way of rehearing whilst maintaining their right of appeal to the LANDS Tribunal. During this period a mutually convenient date has been sought to have this matter reheard. During this period no new evidence has been submitted by the appellants in respect of the property situate at 73 Ballymageogh Road, Kilkeel despite being aware of the difficulty of the admission of this evidence at the original hearing, this evidence having been excluded from the original hearing. The Tribunal find that the duty was on the appellant to produce this evidence that they sought to rely on to the Tribunal. This has not been done at the original hearing or at the rehearing.

15.6 Further the Tribunal note that the provision of Rule 21 (c) state that the evidence must be "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**";(emphasis mine).** This evidence was available at the original hearing but was not introduced formally into evidence and further such

evidence relating to the rehearing has not been served on the Tribunal although the strict rules of evidence do not apply in order to reach a decision, the tribunal do need proof of any contentions made to a reasonable minimum standard and degree. No such "proof" even to a minimum standard in respect of the property at number 73 Ballymageogh Road Kilkeel has been adduced. For this reason the Tribunal find that this evidence is inadmissible. The Tribunal cannot therefore adjudicate on the submissions made by both the appellant and respondent in respect of 73 Ballymageogh Road, Kilkeel.

15.7 Notwithstanding the lack of due diligence on the part of the appellant in obtaining the evidence the respondent in the view of the Tribunal have gone the extra mile in seeking to respond to the representations in respect of the comparable property that the appellant has sought to introduce as comparable evidence.

15.8 The property which is the subject of the appeal of the original decision is 64 Ballymageogh Road, Kilkeel. The subject property has a Gross External Area (GEA) of 226m^2 and a detached garage of 40m^2. The subject property was originally assessed by the District Valuer (DV) as having a site positive "Sea View". On appeal to the Commissioner of Valuation (COV), the subject property had been amended from a description of "Sea View" to "Sea View Limited". The subject property is described as comprising of a garage (GEA 40m^2), double-glazed PVC windows, full central heating, sea view limited, mains water and electricity, septic tank, and as being 'in average external repair' with a Capital Value (CV) assessed as £270,000. The photographs produced do continue to show a sea view limited view, although not strictly relevant to this review of the COV decision. After having carefully examining the comparable evidence as set out in paragraphs 37 to 43 of the decision the Tribunal concluded that the subject property fitted within the "Tone of the List" in relation to comparable properties. The Tribunal have not been persuaded to depart from this view.

(ii) Error in the Decision

15.9 The appellant in his grounds for a review again refers to his method of calculation as being arithmetic. The Tribunal see no reason to depart from the well-established principle now applied in a number of NIVT cases set out at paragraph 39 of the Decision. Under review which states

"*The Respondent has referred the Tribunal to the case of Ashraf Ahmed v Commissioner of Valuation NIVT12/15. At paragraphs 7.6-7.7 of this judgment the Chairman, Mr Reid, stated "the Tribunal does not accept that the Capital Value of a property can be determined or compared with the Capital Value of another property by comparing its size and Capital Value and arithmetically calculating the Capital Value per* m^2 *of either property. Rather, Schedule 12 of the 1977 Order requires that in assessing the amount which the Subject Property might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant AVD Antecedent Valuation Date (in this case 1 January 2005) regard must be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances."*

15.10 The appellant acknowledged approach set out at paragraph 15.9 was the correct one at the review hearing. When questioned by the Tribunal member Mr Kenton the appellant stated that she now appreciated that the arithmetic method was not the correct one but she did not appreciate that at the time.

(iii) The decision was wrong in the interests of justice

15.11 The appellant infers from her representations that the burden of proof on the appellant is not correct and further that they were not informed of the burden of proof as it related to presenting their case...

15.12 The Law is very clear on this matter this matter. Article 54(3) of the Rates (Northern Ireland) Order 1977 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.

15.13 Further the Tribunal hold that the appellant was well informed both prior to the Tribunal and at the commencement of the Tribunal.

15.14 On the 14th day of December 2016 the appellant was sent a Leaflet by the Tribunal prior to the hearing headed **Northern Ireland Valuation Tribunal**. I refer to paragraph 1 of the Leaflet which was sent by the Valuation Tribunal. Paragraph 1 states under the heading:-

"Evidence submitted to the NI Valuation Tribunal

"*Whatever way you have chosen to have your appeal dealt with, either in writing (written representations) or through personal attendance at a hearing, the tribunal can only come to a decision based on the evidence presented to it. As is the case with most appeals the "burden of proof" is upon you as appellant. This means it is up to you to show why the disputed decision is wrong. "*

15.15 At the commencement of this case on the 10th January 2018 the Chairman of the Tribunal read from a pre- prepared statement at paragraph 3(iv) it states:-

"*It should be noted that there is a statutory presumption under Article 54(3) of the Rates(Northern Ireland) Order 1977 ") that On an appeal under this Article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.*

What this means is that it is up to the appellant in any case to challenge and displace this assumption or perhaps for the Commissioners decision on appeal to be seen as so manifestly incorrect that the Tribunal must take steps to rectify the situation"

15.16 It is therefore apparent that the appellants were well informed with regard to the burden of proof namely that it that rested on them.

15.17 It remains the unanimous decision of the Tribunal, for the reasons set out in the Decision issued on the 30th January 2018, is that it was not persuaded that the appellant's submissions that the Capital Value of £270,000 was not correct. The Capital Valuation of the property situate at 64 Ballymageogh Road Kilkeel of £270,000 is correct.

Conclusion

16. Having reviewed its previous decision, the appellants have not made out any of their grounds justifying relief pursuant to Rule 21 and this Tribunal's original decision remains unaffected.

17. The Tribunal would like to acknowledge the assistance given in a most courteous and helpful manner to the Tribunal by both the appellant and the respondent. In light of this decision it is for the appellants, Mr and Mrs Cunningham to consider (whether in

light of the change of circumstances and matters that were held to be inadmissible before this Tribunal) whether a request for a revision by the District Valuer should be sought.

Signed: Mr Stephen Wright B.L. - Chairman

On behalf of the Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to all parties: 11th April 2019