

**DECISION OF THE NORTHERN IRELAND VALUATION TRIBUNAL**

The Rates (Northern Ireland) Order 1977 (As Amended) And The Valuation Tribunal Rules  
(Northern Ireland) 2007 (As Amended)

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BETWEEN

**APPELLANT – Celine Gilhawley**

AND

**RESPONDENT - Commissioner of Valuation for Northern Ireland**

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**Decision of President of the Northern Ireland Valuation Tribunal on application for leave to  
appeal to the Lands Tribunal**

**Tribunal President:** Mr Jim Leonard

**Date:** 26 January 2015

**Decision:** I do grant leave to the Appellant to appeal to the Lands Tribunal upon the issues and for the reasons that are set out below.

**Reasons:**

1. The Appellant, by Notice of Appeal dated 10 July 2013, appealed against the decision of the Commissioner of Valuation for Northern Ireland (“the Commissioner”) on appeal dated 18 June 2013 in respect of the hereditament situated at 27 Aughrim Road, Belcoo East, Belcoo, Enniskillen BT93 5FL (“ the subject property”).
2. The matter was dealt with at an oral hearing by the Tribunal on 30 April 2014. By decision with reasons promulgated by the Tribunal on 18 June 2014 (“the Decision”, which expression also includes the correction matter referred to further in this paragraph) the Tribunal’s determination as set forth in the Decision was that the appeal should be allowed and the Tribunal’s unanimous decision was that the Commissioner’s Decision on Appeal was not to be upheld and that the Capital Valuation List should be properly amended to provide for a figure of £195,000 in respect of the subject property, for the reasons stated in the Decision. By Certificate of Correction signed by the Chairman of the Tribunal and dated

21 January 2015, the Decision was corrected, as therein stated, to provide for the Appellant to be named as above.

3. Mr CD Gilhawley, on behalf of the Appellant, made a request for a review of the Decision (on foot of the statutory procedure) which request was referred to the Chairman of the Tribunal and that request was not upheld by the Chairman and no review of the Decision was, as a consequence, afforded by the Tribunal.
4. Mr CD Gilhawley, by letter dated 20 November 2014 sought leave to appeal the Decision. Subsequently, by letter dated 1 December 2014 Mrs Gilhawley, the Appellant, sought leave to appeal the Decision upon the basis of the content of an appendix to that 1 December 2014 letter, a copy of which letter is attached to this determination (“the appeal letter”). It is this appeal letter to which I refer, by that reference, in this determination.
5. Examining the appendix to the appeal letter, which sets forth particulars of the grounds upon which such a request is made by the Appellant, in summary I draw from the content of that letter the following issues which have been raised by the Appellant and which are material to my determination as to whether or not leave ought properly to be granted, in this instance, to the Appellant to appeal to the Lands Tribunal:-
  - 5.1 The Chairman to the Tribunal acted improperly in rejecting a valid review request and in failing to give reasons as to why the Chairman rejected the request for a review on the basis that it was deemed to have been made out of time.
  - 5.2 The original comparable properties employed as the basis of the capital valuation of the subject property were withdrawn by the Respondent and were not substituted with other comparators, thereby making the original capital value assessment of the subject property invalid. That invalid assessment was not taken account of by the Tribunal in reaching the conclusions which are set forth in the Decision.
  - 5.3 The Decision does not accurately reflect or recite the submissions made on behalf of the Appellant and the balance of submissions made on behalf of the Appellant are omitted entirely from that section in the Decision which recites the Appellant’s submissions.
  - 5.4 The Tribunal in the Decision has not taken account of a specific statutory limitation issue that is stated by the Appellant to affect a sun lounge which forms part of the subject property.
  - 5.5 In regard to the sun lounge mentioned in previous paragraph, the Appellant asserts that the capital value assessment appealed against has taken account

of this on the basis of an error which is contained in that assessment, which constitutes a duplication. The Tribunal in the Decision has made an error in arriving at the assumption which has been made by the Tribunal that this sun lounge assessment had been omitted from previous measurements, without providing in the Decision any explanation for that particular conclusion on the Tribunal's part.

- 5.6 The Tribunal in the Decision has failed to take account of the proper method and the proper basis for capital valuation, such as is required under the statutory provisions.
- 5.7 The Tribunal in the Decision has failed to take properly into account that a revised assessment of capital valuation on behalf of the Respondent had been prepared on the basis of an alleged illegal entry and alleged trespass to the subject property, which subject property is contended by the Appellant to have been a closed and secured property at the material time of this alleged illegal entry and alleged trespass.
- 5.8 In regard to the allegations made in the preceding paragraph, the Tribunal in the Decision has failed to take properly into account photographs taken of the subject property in breach of Article 8 of the European Convention of Human Rights.
- 5.9 The Tribunal, in the conduct of the hearing, has failed properly to exercise an inquisitorial approach and, improperly, has engaged in the course of the hearing in discussing the merits of comparable properties when no comparable properties, such as are required by law, were applicable.
- 5.10 The Tribunal in the Decision has failed properly to take into account certain evidence concerning alleged intentional inaccuracies and alleged misstatements contained in the Respondent's case, as made before the Tribunal.
- 5.11 The Tribunal in the conduct of the hearing and in the Decision has failed properly to take into account, in general terms, alleged breaches of legislation and has failed properly to examine and to address the points of concern raised on behalf of the Appellant.

The appeal letter thus sets forth a request, upon these foregoing grounds, made to the President of the Northern Ireland Valuation Tribunal to grant to the Appellant leave to appeal to the Lands Tribunal, under the statutory provisions which are mentioned below.

## The Applicable Law

6. The statutory provisions relevant to my determination in the matter are to be found in the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”) and in the Lands Tribunal (Amendment) Rules (Northern Ireland) 2007 (“the Lands Tribunal Rules 2007”). These are as follows (in respect of the 2006 Order): -

### **“Appeal from decision or direction of Valuation Tribunal**

**54A.** —(1) Any person who is aggrieved by any decision or direction of the Valuation Tribunal under Article.... 54(2) may, with the leave of—

- (a) the Lands Tribunal; or
- (b) the President of the Valuation Tribunal,

appeal to the Lands Tribunal. “

These are as follows (in respect of the Lands Tribunal Rules 2007): -

“ 4. In rule A1—

(a) -

(b) at the end there shall be added the following paragraphs—

“(4) ..... an appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal shall be instituted by serving on the registrar a notice of appeal in accordance with Form AC within 28 days from the date of the grant of leave of appeal by the President of the Valuation Tribunal.

(5) A notice of appeal under paragraph (4) shall be accompanied by—

(a) a copy of the decision or direction of the Valuation Tribunal against which the appeal is made; and

(b) a copy of the decision of the President of the Valuation Tribunal granting leave to appeal.

(6) An application for leave to appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal may be made to the Lands Tribunal only where the applicant has been refused leave to appeal by the President of the Valuation Tribunal. “

7. Dealing with the first contention set forth in the appendix to the appeal letter (and set forth in summary form in paragraph 5.1 above) which contention, in summary, is that the Chairman to the Tribunal has acted improperly in rejecting a valid review request and in

failing to give reasons as to why the Chairman rejected the request for a review as being deemed out of time, I have not been provided, in the making of this determination, with specific details of the grounds upon which the determination has been made on behalf of the Tribunal that the Appellant's request for a review has been deemed to have been made out of time. It is not my function, in granting leave to appeal, to conduct my own assessment, or re-assessment, in that regard, in reference to the statutory basis upon which any review might be afforded and, in particular, in regard to the assessment of the computation of time necessary to meet the statutory requirements, such as might have been taken into account by the Tribunal in determining whether any time limitation period for seeking such a review had or had not been attained. In the absence of the requisite information being available to enable me to determine whether any point arises, I am unable to determine that this issue constitutes a proper ground for leave to appeal to be granted.

8. Examining the second contention, this contention in summary consists of the assertion that the original comparable properties employed on behalf of the Respondent as the basis of capital valuation were subsequently withdrawn by the Respondent and were not thereafter substituted with other comparators, thereby making the original capital value assessment of the subject property invalid. I note the content of the Decision and I have scrutinised this for any references made which might bear upon the subject matter of this contention. I note that paragraph 4.4 of the Decision makes reference to the Respondent's "Presentation of Evidence" as was submitted on behalf of the Respondent before the Tribunal. Therein is made an express reference to a total of "8 comparables within the locality". Further, the Decision at paragraph 4.5 mentions that the Capital Value Assessments of the comparables were all unchallenged. I assume that this is a reference made to such being unchallenged by those entitled to present such a challenge (whether by way of an appeal to the Respondent to this Tribunal) and not to any issue of potential challenge by the Appellant. The Decision does not specifically deal with nor does it set forth the detail in regard to any of these eight stated comparables. The foregoing point accordingly appears to conflict with the contention which is now made on behalf of the Appellant. The Appellant now seeks leave to appeal, inter alia, upon the basis that comparables had been withdrawn and that no valid comparables existed at the time of the making of the capital value assessment which is now under appeal. I am regrettably unable to reconcile this apparent conflict from an examination of the Decision and from scrutiny of the appendix to the appeal letter. This is so for the reason that this contention on the part of the Appellant appears to be based upon an assertion of fact which is now made but which is not recited or recorded

anywhere in the Decision, as far as I can observe. I note that, whilst the Appellant does take issue with the manner in which the Appellant's contentions and arguments, contended to have been made or advanced at the substantive hearing, have been recorded by the Tribunal in the Decision, nonetheless paragraph 5.1 of the Decision, at sub-paragraph 3, does appear to suggest that in submissions made on behalf of the Appellant to the Tribunal (which are described as being "comprehensive") the subject property is adversely referenced to "comparable properties". Accordingly, if I am correct, this appears to suggest that at the substantive hearing of the matter there was indeed some exploration of and discussion concerning the comparable properties as presented in the Respondent's case to the Tribunal. There seems to be no express mention made in the Decision of any submission such as is now made on behalf of the Appellant, in seeking to advance this argument that the original comparable properties employed as the basis of the capital valuation were subsequently withdrawn by the Respondent and were not substituted with other comparators. In seeking to make a determination as to whether this is or is not a proper ground upon which to grant leave to appeal, I do encounter some considerable difficulty. This is so for the reason that this is a matter of factual dispute as to what arguments were or are not advanced on behalf of the Appellant at the hearing. I do not consider that it is my task, in determining whether or not to grant leave to appeal, to conduct a full and comprehensive review or revisiting of all of the papers and of all of the documentary or other evidence which has been placed before the Tribunal, which Tribunal has been entrusted with the proper conduct of the case hearing. My task, rather, is examine the content of the Decision and the issues such as are set forth by the Appellant in the appeal letter, in order properly to assess whether a valid argument or case for the granting of leave to appeal has been satisfactorily made out by the Appellant. Considering the matter, and certainly not without some difficulty, on balance I am prepared to admit that this contention does constitute a proper ground upon which to grant leave to appeal. My reason for taking this view is that the statutory basis for capital valuation, in its very essence, depends upon the comparative method of capital valuation assessment. It is this process which has been fundamentally challenged by the Appellant in making out the case for leave to appeal. The Appellant's contention is that this statutory procedure, as has been employed in this matter, has been employed in a manner which is fundamentally flawed. If that were to be so, the procedure of appeal to the Lands Tribunal permits that Tribunal to revisit the matter in its entirety, if the Lands Tribunal were of a mind so to do. I am prepared, and again not without some difficulty, on balance, to grant to the Appellant leave to appeal in these circumstances in order to permit the Lands Tribunal, in its discretion, an opportunity to examine the case further in such a manner as it might see fit.

9. Examining the third contention, which is that the Decision does not accurately reflect or recite the submissions made on behalf of the Appellant, once again it is somewhat difficult for me to assess this on the basis of the content of the Decision and the appeal letter alone. For the same reasons as have been mentioned in the preceding paragraph, on balance (and again not without some difficulty) I am prepared to grant leave to appeal to the Appellant in order that the Lands Tribunal, in its discretion, may, as it sees fit, revisit the matter to the extent it may seem proper to do so.
10. The fourth contention is that the Tribunal in the Decision has not taken account of a specific statutory limitation issue affecting a sun lounge which forms part of the subject property. I do not have sufficient information from the Decision and the appeal letter to determine that this constitutes a proper ground for appeal. However, in regard to the fifth contention (set forth in paragraph 5.5 above) which is that a duplication error has been made in the capital value assessment in respect of the sun lounge, in the revisiting of the case, at the discretion of the Lands Tribunal upon appeal, that Tribunal might seek to explore this specific contention in order to determine whether there is any substance in this contention or merit in the issue as sought to be raised by the Appellant.
11. The sixth contention is somewhat of a generalised one and may be subsumed in the other issues, upon which I do grant leave to appeal.
12. The next two contentions, (respectively numbered 5.7 and 5.8 above) are to an extent interlinked. This is because the Appellant's contention, in seeking leave to appeal, is that the Tribunal in the Decision has failed to take properly into account that a revised assessment of capital valuation had been prepared on the basis of an alleged illegal entry and unlawful trespass to the subject property, which property it is contended was a closed and secured property at the material time. Again, it is difficult for me to assess the material facts which might, or might not, underpin these contentions. In the possible revisiting of the case, at the discretion of the Lands Tribunal upon appeal, that Tribunal might seek further to explore these particular contentions on the part of the Appellant in order to determine if there is any proper substance or merit.
13. The final three contentions (respectively numbered 5.9, 5.10 and 5.11 above) may properly be categorised as somewhat generalised and these concern the Tribunal's conduct of the

hearing and the proper exercise of an inquisitorial approach which is available to the Tribunal and which relate to the contended failure on the part of the Tribunal properly to take into account alleged intentional inaccuracies or misstatements and alleged breaches of legislation. I repeat what I have said above in that it is somewhat difficult for me to assess the validity of these more generalised contentions upon the basis of the content of the Decision and of the appeal letter alone. I cannot, from this, see a specific basis for granting leave to appeal arising from these broad contentions. However, in exercising its discretion to deal with the matter on appeal, the Lands Tribunal might, at its discretion, wish further to explore these specific or more generalised contentions on the part of the Appellant as it might see fit.

**President's Decision:** For these reasons and upon the specific grounds and issues which are stated above, I do grant leave to the Appellant to appeal to the Lands Tribunal.

**Signed:** James V Leonard  
Chairman  
Northern Ireland Valuation Tribunal

**Date:** 26<sup>th</sup> January 2015