

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

**CASE REFERENCE NUMBER: 15/14**

**CHRISTOPHER POLLEY - APPELLANT**  
**AND**  
**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr James V Leonard, President**

**Members: Mr Eric Spence MRICS and Ms Angela Matthews BL.**

**Hearing: 31 March 2015, Belfast**

## **DECISION**

The unanimous decision of the tribunal is that the Decision of the Commissioner of Valuation for Northern Ireland is upheld and the appellant's appeal is dismissed.

### **REASONS**

#### **Introduction**

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, by Notice of Appeal (Form 3) received by the Office of the Tribunal on 8 July 2014, appealed against the decision of the Commissioner of Valuation ( "the Commissioner") in a Valuation Certificate dated 12 June 2014 in respect of the valuation of a hereditament situated at number 57 Drumroe Road, Ballinarry, Downpatrick BT30 7AR ("the subject property") whereby

the domestic capital value (non-exempt) of the subject property was determined at a figure of £230,000, the previous valuation having been £215,000.

2. The appellant requested an oral hearing, which proceeded on 31 March 2015 with the appellant appearing and representing himself at hearing and the respondent being represented by Mr Andrew Magill MRICS, together with Mr Michael McGrady MRICS.

### **The Law**

3. The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). The tribunal does not intend in this decision fully to set out the statutory provisions of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, as these provisions have been fully set out in earlier decisions of this tribunal. A number of further statutory provisions are however referred to briefly below. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in the matter.

### **The Evidence and Facts**

4. The tribunal noted the written and the oral evidence adduced and submissions made in the case. The tribunal had before it the appellant’s Notice of Appeal to the tribunal (Form 3) with attachments and various documents including the following:-
  - 4.1 A copy of the Commissioner’s Valuation Certificate dated 12 June 2014 (the copy introduced into evidence itself being unsigned, but presumed to be a true copy of the version which had been signed by the Commissioner).
  - 4.2 A document entitled “Presentation of Evidence” dated 12 August 2014 prepared on behalf of the Commissioner by Mr Andrew Magill MRICS and submitted to the tribunal for the purposes of the tribunal hearing.

4.3 A document entitled “Response to LPS Evidence, January 2015, Valuation Tribunal Hearing”, with appendices, prepared by the appellant.

4.4 A document entitled “Presentation of Evidence, Valuation Tribunal Hearing”, with appendices, prepared by the appellant.

4.5 A document entitled “Response to Mr Polley’s Presentation of Evidence”, prepared on behalf of the respondent.

5. The following facts were not in contention, or were not substantially so, save as otherwise mentioned. The subject property consists of a dwellinghouse situated at number 57 Drumroe Road, Ballinarry, Downpatrick BT30 7AR, that being a rural location situated between Downpatrick and Strangford in County Down. The appellant is understood to be the ratepayer. The property is a detached dwellinghouse which has been subject to a recent extension and conversion. The extension constructed, which the tribunal understands to be to the rear of the property, does not raise any specific issues of significant contention, but there is considerable divergence between the parties concerning the matter of a roof space conversion. There is also a significant difference between the parties concerning issues relating to the exterior condition of the subject property.
6. The rating history of the matter is that the subject property was entered into the valuation list with a capital value of £165,000. Alterations to the property were carried out and the capital value was increased to a figure of £215,000. These alterations consisted of an extension to the subject property, as mentioned above, and also other work was carried out, in addition to this extension, which will be further detailed below and which forms a substantial part of the focus of the tribunal in this appeal. The appellant lodged an appeal to the Commissioner and the Commissioner caused the property to be inspected. A revision was made of the initially assessed Gross External Area (GEA) which had been assessed in May of 2014 at 246 M<sup>2</sup>, with a garage (“MH”) of 42 M<sup>2</sup>; it was determined that what was regarded as having been an earlier surveying error, had been made. On account of this, the GEA was revised to 291.71 M<sup>2</sup>, with the MH assessment at 44.50 M<sup>2</sup>. The respondent’s case is that as a result of the GEA survey correction mentioned above, it was necessary to

amend the capital value to a figure of £230,000, applying the necessary statutory basis of valuation.

7. Regarding the specific state and condition of the first floor of the property (what has been referred to as the “roof space conversion”) the respondent’s Presentation of Evidence states that the first floor of the subject property is in a basic state of fit out, in that non-essential fittings are missing in the form of tiling and/or floor coverings. The first floor, however, is accessed via a fixed permanent staircase. The respondent’s position in respect of this, as set out in the Presentation of Evidence, is that the subject property must be considered to be in a state of average internal repair and fit out in line with the statutory assumption (which will be further mentioned below), it not being possible to reflect any lack of fit out in the application of the statutory valuation regime. Capital values are, under this regime, notionally assessed as at 1 January 2005 (that being the antecedent valuation date, or “AVD”) for the purposes of the statutory domestic rating scheme.
8. The respondent’s Presentation of Evidence mentions a number of what are stated to be comparable properties. The respondent’s listed comparables in addition to the subject property are, firstly, number 59 Drumroe Road, (Ballinarry, Downpatrick), secondly, number 41A Bishop’s Court Road, thirdly, number 27 Drumroe Road and fourthly and finally, number 165 Crew Road. As would commonly be the case in recent times, there exists no recent sales evidence supporting these capital valuations, but these comparators are stated to have unchallenged capital values and are contended, in the respondent’s Presentation of Evidence, to be what is termed “in tone” with the subject property. The identified comparables were substantially challenged by the appellant in submissions. The appellant has put forward a considerable number of alternative properties as, so he would contend, valid comparables, these being twelve in all, in his own Presentation of Evidence. The appellant’s selected comparables include, firstly, number 38 Church Road, secondly, number 47A Killard Road, thirdly, number 69 Lismore Road, fourthly, number 27 Bishopscourt Road, fifthly, number 10 Church Road, sixthly, number 42 Ardglass Road, seventhly, number 39 Church Road, eighthly, number 26 Loughkeelan Road, ninthly, number 35 Bishopscourt Road, tenth, number 40 Bishopscourt Road, eleventh, number 39 Drumroe Road and, finally, twelfth, number 141 Crew Road. These identified comparables were substantially challenged on behalf of the respondent in submissions to the tribunal. In addition to the foregoing,

the appellant also seeks to advance a number of comparables, stating that these are better comparables with the subject property in terms of the actual GEA employed. These listed properties, as mentioned by the appellant, are number 59 Drumroe Road, number 56A Drumroe Road, number 51 Glebe Road, number 45 Loughkeelan Road, number 72 Churchtown Road, number 92 Churchtown Road and number 60 Bishopscourt Road. In listing these in his Presentation of Evidence, the appellant has set forth the GEA and the capital value in each case.

9. The Commissioner's general submission, as respondent, to the tribunal is that, in arriving at the capital value assessment of the subject property, regard was had to the statutory basis of valuation; thus regard was had to the capital values in the valuation list of comparable hereditaments in the same state and circumstances as the subject property. It is contended that the comparables set out in a schedule to the Commissioner's Presentation of Evidence are all similarly circumstanced to the subject property and that these provide the best evidence of value. It is stated that none of the comparables have challenged their assessments; there is no direct sales evidence, as would commonly now be the case. In the Commissioner's Presentation of Evidence the comparables are all located in the relatively close proximity, given the rural location, with the furthest away, number 165 Crew Road, being located approximately 1.5 miles from the subject property.

## **THE SUBMISSIONS AND THE TRIBUNAL'S DETERMINATION**

10. The submissions made on behalf of the respondent have been briefly referred to above, concerning the capital value issues. The appellant seeks to challenge not just the comparative capital value basis employed on behalf of the respondent and the evidence presented to support that, but he also seeks to advance a number of specific arguments, in addition. It might be useful if the tribunal first of all examined the appellant's endeavour to challenge the respondent's position concerning the roof space conversion and the external condition of the property. The evidence advanced by the appellant and supporting submissions is to the effect that the roof space conversion is not complete in terms of construction and has not been certified by Building Control. The contention is that if the property were to be put on the open market it could only be marketed with the entire first floor being described as "storage". The first floor is not, in its current state of construction, fit for habitation so

it is argued; it is currently used for a rough storage only, so the appellant contends. The appellant has listed the works required to render the first floor fit for habitation, including specific works required to meet Building Control stipulations. The appellant argues that many of the essential elements are missing or incomplete matters of construction and repair, not fit out. Whilst the appellant concedes that the property has a fixed permanent staircase, he states that that is as a result of a Building Control requirement which specified that there must be a permanent and unrestricted means of access to a smoke alarm fitted at the highest point in the ceiling. In support of his contentions in that regard, the appellant has submitted a building quotation which he states shows that the estimated cost of bringing the first floor of the subject property to a habitable standard which meets current Building Control regulations is at a cost of £32,396. In respect of issues of external repair, the appellant takes issue with the assessment mentioned in the respondent's Presentation of Evidence that the property is in "average condition" and that the driveway is laid in gravel. The appellant states that the driveway has recently been excavated to lay drainage to address flooding issues and that the main areas of the driveway have been backfilled using hard fill material, resulting in an extremely uneven driveway surface and that considerable external works still required to be conducted. The appellant submits that the external repair of the subject property is of very poor quality and certainly not "average" as has been noted on behalf of the Commissioner.

11. A number of issues raised by the appellant have been addressed in the respondent's response to the appellant's Presentation of Evidence. It is therein suggested, firstly, that had the respondent been aware that the first floor was in existence at the time of the initial assessment, that area would have been included in the assessed capital valuation and the assessment would have been higher than the initial figure of £165,000. However, the rear extension and the first floor were not included in that assessment. The subject property must be assumed to be in a state of average internal repair and fit out. Whether or not the subject property is finished to an average state is irrelevant in that it must be assumed to be so. The use made by the occupier is also irrelevant and is a matter of personal choice. The fact that full Building Control consents or approvals have not been obtained, or that the subject property does not meet current Building Control standards, cannot be taken into account in the assessment of capital value due to the statutory assumptions. It is assumed for the purpose of assessing rateable value that there has been no

contravention of statutory regulations including those in respect of Building Control. This is a statutory assumption which must be applied. Regarding the matter of external works and the adequacy of surfacing of the driveway in respect of the subject property, temporary works to make repairs are not reflected in rating assessments. The assumption is that unfinished ground works will be completed. The appellant had also sought to introduce evidence of market value or a guide price, but that is irrelevant to the assessment of capital value as at AVD. It was also contended that the appellant's observations in respect of the selected comparable properties were subjective and that the statutory provisions direct the respondent to assess the subject property in line with similar properties already in the valuation list which are in the same state and circumstance as the subject property.

12. Dealing firstly with the appellant's endeavour to advance the submissions that the development potential of the property has been factored into the revised capital value and that the upstairs of the subject property is in a basic state of repair and fit out and that the capital value assessment of the property has not been correctly conducted on behalf of the respondent, having carefully considered all of the arguments advanced, the tribunal does not uphold the substance of the appellant's submissions. The rating concept of taking into account certain statutory assumptions is perhaps something of an artificial concept, but nonetheless it is one which must, of necessity and regardless of that, be properly and appropriately applied by the tribunal. The tribunal, it must be mentioned, has indeed no discretion in that regard. Therefore one statutory assumption (as has been mentioned in many previous decisions of the Northern Ireland Valuation Tribunal) exists to the effect that: "*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*". [See the Rates (Amendment) (Northern Ireland) Order 2006 Article 8, entitled "*Capital value – the assumptions*" and, specifically, Article 8 (12)]. Upon the evidence available in this matter, that latter assumption must be applied and the tribunal's assessment is that it has been properly applied, on behalf of the respondent, to the subject property in this instance. The assessed area, according to the evidence, has been correctly included at a figure of 291.71 M2. Rating under the capital valuation regime is thus properly to be assessed, taking account of the entirety of the subject property. Furthermore, the tribunal does not concur, having carefully considered the submissions, with the appellant's position concerning the argument advanced in relation to the external

state and condition of the subject property. Again these arguments, of themselves, do not displace the statutory presumption of correctness. In that latter respect the tribunal notes the statutory presumption that is contained within the 1977 Order, Article 54(3), whereby any valuation shown in a valuation list shall be deemed to be correct until the contrary is shown. The appellant has also advanced an argument that development value in respect of the subject property has been improperly taken into account in the capital value assessment. Having noted this argument, the tribunal does not find in favour of the appellant. The Rates (Amendment) (Northern Ireland) Order 2006, Article 8(13), provides that the statutory assumption must be applied to the effect that the hereditament, in this case being the subject property, has no development value other than value attributable to permitted development and there is nothing supporting the proposition that this assumption has been incorrectly applied.

13. The tribunal then turns to the appellant's direct challenge to the comparables selected on behalf of the respondent and to a consideration of the alternative properties submitted by the appellant and to the ancillary arguments advanced by the appellant in that regard. The tribunal in this case has conducted a detailed analysis of the comparables that have been put forward examining, firstly, the comparables selected on behalf of the respondent. Exact comparison is never (or at least not normally) a possibility and therefore the tribunal in any case such as this is looking for evidence to support the correctness, or otherwise, of the assessment of any capital value under appeal. The tribunal is accordingly tasked with closely examining whether or not the statutory presumption of correctness has been effectively displaced on the strength of any evidence or argument advanced by the appellant. The burden of proof in that regard is accordingly placed upon any appellant. As mentioned, the statutory presumption is that contained in Article 54(3) of the 1977 Order. In order to succeed, the appellant must either successfully challenge and displace that statutory presumption of correctness or the Commissioner's decision, objectively viewed, must be seen by this tribunal to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the capital value to an appropriate figure. In this matter, having examined the general approach taken, there is nothing to suggest that the matter had been approached for assessment in anything other than the correct and prescribed manner, such as is provided for in Schedule 12 of the 1977 Order.

14. The respondent's contention, as set forth in the Presentation of Evidence, is that the unchallenged capital values of the selected comparables, these being number 59 Drumroe Road, number 41A Bishop's Court Road, number 27 Drumroe Road and number 165 Crew Road, provide the best evidence possible to support the capital value of the subject property. Having examined these with some care, the tribunal's assessment is that these selected properties, taken individually and also viewed collectively, do support the assessment of the capital value in respect of the subject property, at a figure of £230,000, as being correct. To take a few examples, the property that is located adjacent to the subject property at 59 Drumroe Road has the advantage of immediate proximity, but it is a little smaller in GEA at 242 M<sup>2</sup>, but with a larger MH of GEA 77 M<sup>2</sup>. This has a prescribed capital value of £210,000. The property located close to the subject property at 41A Bishop's Court Road has again a smaller GEA at 257.55 M<sup>2</sup> and has a MH of GEA 44.6 M<sup>2</sup>, the latter MH being similar to the subject property. This has a prescribed capital value of £215,000. The view of the tribunal is that these properties and also including those others selected and included in the respondent's Presentation of Evidence, do upon the basis of the evidence tend to support the correctness of the assessed capital value in respect of the subject property. Certain of the properties selected by the appellant indeed also tend, in the view of the tribunal, further to support the correctness of the assessed capital value in respect of the subject property. The value of some properties selected by the appellant is however lessened by being located at some distance from the subject property. To take some specific examples, evidence is available concerning number 39 Drumroe Road. That is a considerably smaller property than the subject property in terms of GEA at 231.8M<sup>2</sup>. It bears an assessed capital value of £200,000. Number 141 Crew Road, again being a smaller property in terms of GEA at GEA 265 M<sup>2</sup> (with MH of GEA 52.1M<sup>2</sup>) is assessed at £215,000(unadjusted). These latter offer clear support to the respondent's valuation, as indeed would number 38 Church Road, having a GEA of 355 M<sup>2</sup> (with outbuilding of GEA 114.40M<sup>2</sup>) assessed at £245,000, 27 Bishopscourt Road, having a GEA of 330 M<sup>2</sup> (with outbuilding of GEA 113.20M<sup>2</sup>) assessed at £250,000 and perhaps number 39 Church Road, having a GEA of 285 M<sup>2</sup> (with MH of GEA 47.20M<sup>2</sup>) assessed at £230,000, although that latter is a little further away. Some others presented by the appellant were not of significant material assistance to the

tribunal's assessment, for example number 69 Lismore Road which is a pre-1919 detached farmhouse and number 26 Loughkeelan Road, which is under revision at present and number 40 Bishopscourt Road which appears to be not "within tone", in accordance with the evidence. Examining all of these as to relative comparability and usefulness of capital value evidence, there were noted issues of proximity and relative distance, different ages and property types and differing considerations as to whether and if so to what degree or extent, these identified hereditaments and associated capital values in the valuation list represented comparable hereditaments in the same state and circumstances as the subject property, for that latter concept must be the proper focus of the tribunal in this appeal.

15. The tribunal carefully considered all of this evidence in terms of value, weight, relevance and appropriateness. Having conducted a thorough assessment and analysis of all of the evidence, in summary, the tribunal's unanimous view is that the appellant has not raised sufficiently persuasive evidence in this case to displace the statutory presumption of correctness in respect of the Commissioner's decision in the matter as to the appropriate capital value in respect of the subject property, being an determined figure of £230,000. This being so, notwithstanding the very evident care, considerable industry and quite substantial effort which the appellant has very clearly devoted to the preparation and to the presentation of this appeal, the tribunal does not determine the appeal in favour of the appellant. Accordingly, this appeal cannot succeed and the appellant's appeal is dismissed by the tribunal upon the basis of this assessment of the evidence and the application of the relevant law to the facts.

**James V Leonard, President**  
**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties:**