

NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: NIVT 59/14

DAVID CLARKE– APPELLANT

AND

COMMISSIONER OF VALUATION FOR NI - RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 6 July 2015

Chair: Sarah Ramsey

Members: Philip Murphy (Valuer) and Noreen Wright (Lay)

DECISION AND REASONS

The Facts of the Case

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (“the 1977 Order”). By a Notice of Appeal dated 21 March 2015 the appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland (“the Commissioner”) in respect of the decision letter of 18 December 2014 regarding the valuation of a hereditament situated at 168 Dublin road Banbridge BT32 3PB (“the subject property”) as £70 000. The appellant, Mr. David Clarke did not attend the tribunal in person although he did provide written evidence and the Tribunal considered the case on the papers.

2. The respondent’s Presentation of Evidence describes the subject property as a privately built detached bungalow of block/brick construction with a pitched tiled roof, PVC double glazed windows and front external door. The property is located just off the A1 carriageway between Banbridge and Newry. The bungalow has a GEA of 108m² together with an outbuilding of 34m².

3. The appellant in his Notice of Appeal stated that the property has been vandalized and is derelict, and secondly that the property has no access to it other than by climbing a fence from the A1 road which is dangerous. He submitted that the property was sold to him without access, and the purchase price was £10500 including ½ an acre of land.

4. By determination of 28 January 2015 the LPS assessed the capital value of the property to be £82 500, (reduced from £120 000) following a requested review, to reflect the poor external repair and difficult access. This was amended to £70 000 on 26 February 2015 following an appeal.

The Evidence

5. The following documents were before the tribunal;

- Appellant's Notice of Appeal to the Tribunal dated 21 March 2015;
- Valuation Certificate dated 26 February 2015;
- Respondent's written Presentation of Evidence dated 26 May 2015;
- Ordinance Survey ACE Map of the subject property;
- Correspondence between Divisional Planning Office and Roads Service dated 31 March 2009;
- Correspondence from LPS dated 24 August 2012;
- Photographs of Subject Property submitted by the appellant

4. This notice communicates the tribunal's decision and contains the reasons for the decision in accordance with Rule 19 of the Valuation Tribunal (NI) Rules 2007.

The Law

5. The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (hereinafter the 2006 Order). 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, as is customary, does not intend in this decision to fully 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, for the reason that these provisions have been fully set out in many decisions of this tribunal, which are readily available. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter.

The Tribunal's Findings

6. The issue before the tribunal in this appeal is whether the subject property's value should be reconsidered in the light of Land and Property Services giving the subject property a valuation of £70 000 as at 1 January 2005 given that the subject property was in poor state of repair and had only limited pedestrian access.

8. The subject property had been originally owned by the appellant and had been compulsorily purchased for the dualling scheme on the A1 in 2002. It was later sold back to the appellant as it had become surplus to requirements.

The respondent provided in her presentation of the evidence the fact that when the property was sold back to the appellant, as there was no vehicular access directly from the A1 the purchaser must satisfy the Department they can provide a lawful means of access to the lands. In fact vehicular access to the property is possible through business premises that are owned by the appellant.

The respondent provided four comparables, which, she submitted, set the tone of the list. Each comparable was in the vicinity of the subject property and comprised a 1966-90 detached bungalows. Though not explicit in the tables provided the Tribunal assumed all comparables have central heating.

a) 1 Brickland Road which was three miles from the subject property has a capital value of £120 000. This had a GEA of 116 ² and a garage of 28m².

b) 131 Dublin Road, which was on the same road as the subject property, has a GEA of 118m² and an outbuilding of 22m². The assessed capital value was £125 000

c) 1 Meenan Road is 2.7 miles from the subject property. It has a GEA of 106m², a garage of 28m². The assessed capital value was £115 000

d) 47 Dublin Road is located on the same road as the subject property. It has a GEA of 111 m² with a garage of 38m². The capital value is £120 000

The Tribunal noted that none of the comparables have the same access issues as the subject property

9. Capital value cannot be considered to be the same as market value. Sale price can be affected by the duration of the marketing period, for example, or the vendor's need for a quick sale or the interest or lack of interest from purchasers. The comparable properties referred to above therefore set the tone of the list and the subject property must be considered with reference to these properties.

10. However, the Tribunal considered in particular the effect the lack of access would have on the sale of the subject property. The appellant submitted the subject property effectively had no value due to the state of repair and the lack of access.

11. In relation to the first point as regards the property being derelict the respondent referred to **Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin)** A property which requires a reasonable amount of repairs continues to be a hereditament. In the respondent's presentation of evidence it was submitted that the property could not be described as derelict and it is clearly repairable. The repairs should be seen as just that and not renovation. The appellant did not adduce any evidence to counter this assertion; the panel had before it a series of internal and external photographs of the property, which appeared structurally sound albeit requiring both internal and external repair.

12. In relation to the access issue the respondent considered the appellant did have vehicular access to the property as a vehicle could access the property through an adjacent timber yard, which either belonged to the appellant or to a company the appellant was involved with. The respondent submitted evidence of this being the

fact that the contract of sale in relation to the sale of the land back to the appellant was conditional upon the appellant being in a position to provide vehicular access. The respondent considered the adjacent timber yard and the subject property should be considered a composite property.

13. The appellant provided an ordinance survey map of the subject property and the A1 road and documentation from the Planning Service in Northern Ireland dated 31 March 2009 confirming planning permission for any new access to the subject property from the A1 would not be granted.

14. Further the appellant provided proof of acceptance of the sale of the property to the appellant on 24 August 2012 in the sum of £10 500.

15. The respondent calculated the property if following the tone to have a capital value of £110 000, less £10 000 discounted to take account of the external disrepair, and a further allowance of £30 000 to reflect difficult access and proximity to the commercial timber yard. In accordance with Schedule 2(2) of the Rates (NI) Order 1977 the respondent determined the capital value to be £70 000.

Decision

16. The Tribunal does accept the property comprises a hereditament. The tribunal does not consider that a composite property exists, in that the subject property and the timber yard comprise two separate hereditaments and should therefore be considered individually. The tribunal does not therefore consider it appropriate to value the subject property as if it has access through the commercial yard.

17. Pedestrian access from the A1 is extremely limited as a “crash barrier” prevents the option of installing any kind of footpath. Access can only be afforded by climbing over this barrier. The subject property does not have any access to vehicular traffic, and the Tribunal considered the capital value of the subject property to be considerably reduced as a result.

17. In reality the potential for the subject property to be sold in these circumstances would be very reduced. Doubtless the reduced market value and the sale of the land to the appellant in August 2012 for £10500 was due to the issues with access to the subject property.

18. The Tribunal must take account of the statutory presumption contained in Article 54(3) of the 1977 Order. It states “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 “. It is therefore up to the Appellant in any case to challenge and to displace the presumption or perhaps for the Commissioner’s decision on appeal to be seen to be so manifestly incorrect that the tribunal must take steps to rectify the situation.

19. The Tribunal considers that in providing the documentations as set out above to the Tribunal, the appellant has discharged the burden upon him to show that the valuation assessed for the subject property is not correct in accordance with paragraph 7 of Schedule 12 of the 1977 Order. The tribunal is of the view that the

subject property is not appropriately on the Valuation List and at present is not in accordance with tone with evidence the appellant has adduced in its Presentation of Evidence. The appellant chose not to challenge the comparables proposed by the respondent in the presentation of the evidence. However, the tribunal does not accept the respondent's assertion that the subject property and the timber yard are a composite property. In all of the circumstances and in light of the findings above the tribunal was satisfied that the valuation shown on the Valuation List in relation to the subject property was incorrect and that whilst the tone has been established in the area, the restricted pedestrian and lack of vehicular access to the subject property other than via a separate hereditament substantially reduces the capital value.

28. The unanimous decision of the tribunal is that the appeal is allowed and that the appropriate capital value of the subject property is £10 000.



**Ms. Sarah Ramsey, Chair
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties:

20th August