

NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: NIVT 40/14

DR RAYMOND STEEN APPELLANT

AND

COMMISSIONER OF VALUATION FOR NI - RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 15 August 2015

Chair: Sarah Ramsey

Members: Hugh McCormick (Valuer) and Garry McKenna (Lay)

DECISION AND REASONS

The Facts of the Case

1. This reference is made under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (“the 1977 Order”). By a Notice of Appeal dated 27 November 2014 in respect of the property, 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 27 October 2014 in relation to the valuation of the hereditament situated at 68 Enagh Road Dromara Co Tyrone BT25 2PG (“the subject property”) as £200,000.
2. The appellant, Dr Raymond Steen and the Respondent Mr. Andrew Magill MRICS on behalf of the Commissioner for Valuation were present at the tribunal and both gave oral evidence.
3. The respondent’s Presentation of Evidence describes the subject property as a new build detached house erected in 2013-2014 of block construction with a standard slate pitched roof located in a rural area near Dromara.

The property is located at the end of a laneway that is shared with 66 Enagh Road. The laneway is owned by the owner of 66 Enagh Road. A right of way exists over part of the laneway from the appellant to access his property.

4. The main issue is that the owner of the laneway has placed a double gate across the laneway that remains closed with one of the gates remaining unlocked. At hearing the appellant clarified that the owner of the laneway had imposed a further restriction on the laneway in that a permanent railed fence had been erected opposite the gates. This fence combined with the locked gates prevents any vehicle larger than a car from gaining access to the subject property.
5. The appellant asserted that consequently vehicles for the delivery of home heating oil or coal or for emptying the septic tank or emergency vehicles such as fire tender cannot gain access to the subject property.
6. The subject property has a gross external area of 222 m² and a garage of 77m². The capital value has been assessed as £200,000.
7. The appellant in his Notice of Appeal indicated that there is very limited access to his property. The gate was erected shortly after building work on the property was completed having previously been across the laneway prior to the appellant purchasing the subject property.
8. The appellant has been legally advised to ensure the gate is constantly kept closed which he indicated takes him up to one hour per week. Whilst there is access by car there is none for lorries, or as conceded at hearing only small lorries. Two dogs have free access to the laneway.
9. The appellant argued that these issues reduce the value of the property by 20%, namely a proposed reduction to £168,000.
10. The Subject property was first entered into the Capital Value Valuation List as a new detached house with a capital value of £210,000. On 29 September 2014 the appellant appealed this decision to the Commissioner of Valuation. The Capital value was reduced to £200,000 due to the close proximity of a nearby agricultural building which has been let to a local farmer. The agricultural property can also be accessed via the nearby agricultural fields.

11. On 27 November 2014 the appellant appealed his decision to the Northern Ireland Valuation Tribunal. Whilst outside the time limit for appeal, by way of explanation the appellant produced evidence of health issues and the Commissioner took no issue with the appeal being made out of time. In the circumstances the tribunal took a similar view and allow an appeal out of time.

The Evidence

12. The following documents were before the tribunal;
 - Appellants' original Notice of Appeal to the Tribunal dated 27 November 2014 with appended written reasons for appeal
 - Correspondence from appellant to NIVT dated 4 August 2015
 - Correspondence received 20 March 2015 from appellant to NIVT
 - Photographs of the laneway and subject property provided by the appellant 16 April 2016
 - Respondent's written Presentation of Evidence dated 10 February 2015;
 - Correspondence between the appellant and his solicitor in relation to issues with the laneway dated 21 March 2013, 10 June 2014, 28 August 2014, 6 March 2015. In addition, and with the agreement of the respondent, further correspondence between the appellant his solicitor and the owners of the laneway was received by the tribunal on 24 August 2016.
13. Land and Property Service were sent a copy of this documentation and were given the opportunity to respond but declined to do so
14. 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 Hearing

15. The respondent gave oral evidence first in accordance with the information provided in the presentation of evidence. In addition Mr. Magill confirmed he

had measured the width of the double gate from an air survey and it measured 6.6m wide. The respondent indicated that in considering the case he assumed that there was a properly executed legal document granting the right of way.

- a. The Appellant then gave evidence. He confirmed that it was the combination of the gate and the railing erected by the owner of the laneway which restricted access to the lane. Cars were able to pass through the gate but large lorries were not. This created an immediate problem for the appellant in relation to the provision of heating oil. Presently he was using a wood burning stove. He was yet to investigate whether it was possible to have a smaller sized lorry deliver oil. In relation to his septic tank, he gave evidence that it had never been emptied, but was unclear as to when this would be required and the implications of being unable to do this. The appellant was considering changing his main heating source to a method which would not require the transport of heating oil.
- b. The appellant produced correspondence from his solicitor to show the ongoing legal issues relating to access to the laneway. He confirmed that there was not a registered right of way to use the laneway, merely an unregistered easement which he felt the laneway owner was severely restricting.
- c. The appellant confirmed that there was an alternative access to the road across his land which did not use the laneway which was currently being used by the farmer renting the nearby agricultural building.
- d. The appellant indicated he did not take issue with the comparables produced by the respondent – the thrust of his appeal was that his restricted use of the lane to the subject property should reduce the property's capital value.

The Law

16. When a capital value is being assessed it is necessary to adhere to statutory assumptions. And relevant to this appeal is the assumption that the hereditament is being sold free from encumbrance. In accordance with

Schedule 12 (2) with the Rates (NI) Order 1977 the capital value must be assessed comparing the subject property against those properties that are in the same state and circumstances.

17. Schedule 12 paragraph 8 of the Order defines an encumbrance as

“any incumbrance, whether capable of being removed by the seller or not”

18. The Appellant submitted that the fact the Subject Property was subject to restrictions by virtue of the gated entrance to the property was an encumbrance which should have been taken into consideration when the capital value was assessed and if it had been then the Capital Value of the Subject Property would be reduced.

19. The respondent argued the subject Property has been properly valued free from any encumbrance, and the comparables presented to the Tribunal reflected this fact.

20. Article 54 of the 1977 Order enables a person to appeal to the Tribunal against the decision of the Commissioner on appeal as to Capital Value. In this case the Capital Value has been assessed at the Antecedent Valuation Date of 1st January 2005 as a figure of £200,000 (having been reduced due to the nearby presence of an agricultural building). On behalf of the Commissioner it has been contended that this figure is fair and reasonable in comparison to other properties and the statutory basis for valuation has been referred to and especially reference has been made to Schedule 12 to the 1977 Order in arriving at that assessment.

21. The Tribunal must begin its task by taking account of an important statutory presumption contained within the 1977 Order. Article 54(3) of the 1977 Order provides:

22. *“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”.*

23. It is therefore up to the appellant in any case to challenge and to displace that 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.

24. The Tribunal gave considerable consideration to the impact of the gate and railings as described in the evidence to the Tribunal on the Capital Value of the subject property. The Tribunal also note the potential for an alternate route for the access of larger vehicles and the potential for heating oil to be delivered in smaller lorries. The effect of these options on the appellant was to negate the limiting effect of the restrictive gate.
25. However, in any event Capital Values for rating purposes are assessed under Schedule 12 Rates NI Order 1977. This outlines the assumptions which are to be made for all properties. The assumptions in the Rates NI Order 1977 states that hereditaments are to be valued on the basis that there are no encumbrances affecting the property. Therefore if the contention made by the appellant that the gated access was viewed as an encumbrance, for the purposes of assessing capital value for rating purposes it must be ignored.
26. Consideration was given to the perceived state and circumstances of the hereditament at the date of the publication of the valuation list. The date of publication of the valuation list is 1st January 2007. The relevant Capital valuation date is 1st January 2005.
27. The Tribunal saw nothing in the Decision of the Commissioner on appeal to suggest that the matter had been assessed in anything other than the prescribed manner. The statutory mechanism has been expressly referred to in the Commissioner's submissions to the Tribunal and the Tribunal notes the evidence submitted as to comparables and considers the comparables to be appropriate. The Tribunal concludes that the correct statutory approach has been followed in this case in assessing the Capital Value.
28. The Decision of the Lands Tribunal in the case of Marks and Spencer Plc v The Commissioner of Valuation for Northern Ireland 1990 indicates that the valuation certificate must reflect the state and circumstances of the revised hereditament at the date of that certificate. As the Lands Tribunal stated in VR/12/1982 Northern Ireland Transport Holding Co Ltd v The Commissioner of Valuation for Northern Ireland , it is not permissible to assume the circumstances differ from actualities, relating whether to natural or physical facts or to legal rules and rights. The Tribunal is satisfied that in this instance where a revision of the Valuation List has taken place that due regard has been given to other Capital Values in the list of comparable hereditaments in the

same state and circumstances as required by Schedule 12 and the assessed Capital Value is appropriate with the established tone.

The Tribunal's Findings

29. The appellant has not discharged the burden upon them to show that the valuation assessed for the subject properties is not correct in accordance with paragraphs 7 & 8 of Schedule 12 of the 1977 Order. The tribunal is of the view that the subject properties are appropriately on the Valuation List in accordance with tone with evidence the respondent has adduced in its Presentation of Evidence. The appellants chose not to challenge the comparables proposed by the respondent in the presentation of the evidence. In all of the circumstances and in light of the findings above the tribunal was satisfied that the valuations shown on the Valuation List in relation to the subject properties is correct and that the Tone has been established.

30. The unanimous decision of the tribunal is that the appeal is dismissed.

Ms. Sarah Ramsey - Chair

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties - 22 September 2016