

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: 11/15

ELAINE BRANAGH - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Christopher Kenton FRICS and Mr Patrick Cumiskey

Hearing: 27 April 2016, Belfast

DECISION

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

REASONS

Introduction

1. This appeal consists of 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 on 27 May 2015 appealed against the decision of the Commissioner of Valuation in a Valuation Certificate dated 29 April 2015 in respect of the valuation of a hereditament situated at number 34 Ballyhone Road, Beltoy, Larne BT40 3LW ("the subject property").
2. The appellant, in making her appeal, requested a hearing and the matter was listed for an oral hearing on 27 April 2016 and proceeded on that date, with the appellant appearing and representing herself and with the respondent being represented by Mr David Barton MRICS, accompanied by Mr Gary Humphries 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 detail of 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 previous decisions of this tribunal, readily available. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter. Antecedent valuation date or “AVD” is the date to which reference is made for the assessment of capital values in the Valuation List. Until a further domestic property revaluation occurs, capital values are, under the statutory regime, notionally assessed as at 1 January 2005, that being the AVD for the purposes of the domestic rating scheme. The legislation, at Schedule 12, paragraph 7 of the 1977 Order, as amended, provides that the capital value of a hereditament shall be the amount which, on the assumptions mentioned (materially in paragraphs 11 and 12 of Schedule 12, mentioned below), the hereditament might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date. The relevant paragraphs of Schedule 12 include the following statutory assumptions, which provide that –

11. The hereditament is sold free from any rentcharge or other incumbrance;
12. (1) 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,
(2) The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

The Evidence and Submissions

4. The tribunal heard oral evidence from the appellant and from the respondent’s representatives and noted the papers in the matter and the documentation adduced in evidence, including evidence relating to the comparables (these being potentially

comparable properties from which evidence of capital valuation may be drawn for statutory purposes) put forward in the matter. The tribunal had before it the appellant's Notice of Appeal to the tribunal (Form 3) and the following:-

4.1 The Valuation Certificate dated 29 April 2015.

4.2 A document dated 12 January 2016 entitled "Presentation of Evidence" prepared on behalf of the Commissioner, as respondent, by Mr David Barton MRICS and submitted to the tribunal.

5. The subject property is number 34 Ballyhone Road, Beltoy, Larne BT40 3LW. It has been further described in the Presentation of Evidence. The appellant does not take substantial issue with many of the details provided in this document as far as description and characteristics of the subject property are concerned and the tribunal will focus upon specific points of issue, which are mentioned below. The subject property is a modern detached bungalow constructed in 1995 located in a rural area approximately 6 miles South of Larne. It has a gross external area ("GEA") of 195 m² for the dwellinghouse, with ancillary accommodation of GEA 8 m² (consisting of a primarily glazed conservatory) and a garage of GEA 31 m². Regrettably, some of the information which is normally included on behalf of the respondent in such Presentations of Evidence is absent in this case. There are, however, a number of photographs provided in the Presentation of Evidence. These photographs were of some assistance to the tribunal, but however rather limited in some instances. The tribunal would wish to note that greater consistency of inclusion of specific information in such Presentations of Evidence would certainly assist the tribunal in its deliberations in such cases. For example, there has been no information provided on behalf of the respondent as to whether or not subject property is served by a septic tank or by mains sewerage. We do know, from the appellant's case (not, however, from the Presentation of Evidence) that there is apparently no mains water connected to the subject property and that the water supply serving the subject property is taken from a private source. We have been provided with no information regarding the internal accommodation of the subject property, nor other, what might perhaps constitute potentially relevant, circumstances, which are more usually

encountered in such Presentations of Evidence. Some matters which were included and which are of relevance are as mentioned below.

6. The rating history of the matter is that on 17 October 2014 the appellant applied to the District Valuer for a review of the subject property in the Valuation List on the basis that the current capital value was, so she argued, excessive. During the course of a review conducted, the District Valuer identified that the subject property had been altered since the last inspection. A former integrated garage had been converted to habitable space; there was an addition of a sunroom to the front elevation of the subject property and there was also a lean-to garage constructed to the side elevation. Upon re-assessment, the GEA of the dwellinghouse was increased from GEA 172 m² to GEA 204 m² and the GEA of the garage was increased from GEA 24 m² to GEA 48.50 m². The District Valuer amended the capital value from £195,000 to £220,000, effective from 1 April 2015, for rating purposes. A Certificate of Valuation to this effect was issued on 20 March 2015. On 30 March 2015 the appellant lodged an appeal to the Commissioner against the District Valuer's decision. The subject property was inspected on 15 April 2015. The Commissioner made a determination reducing the capital value from £220,000 to £210,000 with effect from 1 April 2015 for rating purposes. The reason for this capital value reduction was as a result of the assessed GEA in respect of the dwellinghouse being amended from 204 m² to 195 m². This amendment was primarily attributable to the reclassification of the conservatory, which has a GEA of 8.27 m² from "habitable space" to "ancillary space". Further to that, the assessed GEA of the garage was amended from 48.50 m² to 31.00 m². As a consequence of this, the Valuation Certificate dated 29 April 2015 was issued, against which the appellant now appeals.
7. The appellant has advanced a number of arguments in this appeal. These contentions essentially fall into two primary areas. The first contention seeks to challenge the capital valuation ascribed to the subject property based upon the antecedent valuation date (AVD) basis. As the appellant puts it in her appeal, "*I dispute being charged 2005 prices, which are hugely inflated by today's market value. You are in effect over charging me and this is illegal*". In response to this submission, the respondent's representatives drew the tribunal's attention to the inherent nature of the capital value system, based as this is upon the concept of capital valuations

being made with reference to AVD. In this respect the respondent's representatives submitted that the subject property had been correctly and properly valued upon the proper statutory basis.

8. The second contention advanced by the appellant seeks to dispute the capital value ascribed to the subject property which was derived from house type and size with no consideration being afforded, as the appellant saw it, to the amenities and services that were actually available to serve the subject property. This might perhaps be referred to as the "situational disadvantage" argument, as advanced by the appellant. As the appellant sees it (and this was conveyed both in her written appeal and also in her oral presentation of the matter to the tribunal) the appellant observes a significant situational disadvantage attaching to the subject property. In her evidence and associated submissions the appellant informed the tribunal that the subject property was served by a private water supply; nonetheless, the appellant believed that a proportion of the rates levied against the subject property was going towards payment for water. Furthermore, she contended that there was a dangerous exit from the subject property onto a single lane roadway, with few areas for passing oncoming traffic. The roadway had potholes and had no street lighting and it was never gritted and there was no hedge cutting provided. The appellant, so she stated, exited onto a full national speed limit roadway, which was extremely dangerous, she argued. In response to these arguments, on behalf of the respondent it was contended that individual services such as might be provided by local Councils or statutory undertakers were not reflected in each individual capital value assessment. The respondent's position in this respect was that the comparables indicated in the Presentation of Evidence were located in the same Council Ward as the subject property and located in the same neighbourhood and the comparable properties, so it was submitted, were likewise similarly affected in the same manner as was the subject property. Accordingly, the submission made on behalf of the respondent was that the subject property was no more disadvantaged than were the comparables in terms of location or situational disadvantage. Therefore, no further allowance to the current capital value was considered to be relevant. There were comparables put forward in the Presentation of Evidence which will be further referred to below by the tribunal. The argument advanced on behalf of the respondent directed the tribunal to the specific example of the first and second-mentioned comparables contained within the Presentation of Evidence. These

comparables were both located off the Ballyhone Road. No additional allowances had been afforded as far as these were concerned, to reflect such issues as were highlighted by the appellant in her submissions to the tribunal.

9. The respondent's general submission was that in arriving at the capital value assessment in respect of the subject property, regard was had to the statutory basis of valuation. Accordingly, reference was made to schedule 12, paragraph 7 of the 1977 Order, as amended. It was submitted that regard was had, when valuing the subject property for the purpose of the Valuation List, to the capital values in the Valuation List of comparable hereditaments in the same state and circumstances as the subject property. The comparables identified are as set out in a schedule to the Presentation of Evidence.
10. There are six comparables presented in total in addition to the subject property, all of these in accordance with any information provided (in the absence of any mapping, which would normally have been the case) understood to be located in relatively close proximity to the subject property. Some information, nonetheless, has been provided in a Presentation of Evidence concerning the distance of each comparable from the subject property, the greatest distance in any case being 2.50 miles from the subject property. The respondent's submitted comparables all are presumed to have unchallenged capital valuations (again in the absence of that being expressly stated). In addition to the subject property, the following six properties, with brief material particulars provided, are stated to be as follows:-
- 28 Ballyhone Road, Larne, County Antrim BT40 3LW – detached bungalow constructed in 1995, GEA of 170.45 m², garage of GEA 32.80 m², outbuildings of GEA 44.40 m². There is no reference made to issues of water supply, electricity and sewerage or any internal circumstances. The photographic evidence is of an aerial view only, with no ground level view provided and this property is located circa 0.20 miles North of the subject property. The Capital Value is £190,000.
 - 22 Ballyhone Road, Larne, County Antrim BT40 3LW – detached bungalow constructed in 1995, GEA of 165.20 m², garage of GEA 22.70 m². Again, there is no reference made to issues of water supply, electricity and sewerage or any

internal circumstances. The photographic evidence is of a ground level view and this property is located circa 1.20 miles North-west of the subject property. The Capital Value is £180,000.

- 17 Ballywillin Road, Larne, County Antrim BT40 3LQ – detached bungalow constructed in 1989, GEA of 188.50 m², garage of GEA 88.20 m², with no reference made to issues of water supply, electricity and sewerage or any internal circumstances. The photographic evidence is of a ground level view (without showing the entire view of the property) and this property is located circa 1.60 miles West of the subject property. The Capital Value is £205,000.
- 1 Marys Loanen, Ballywillin, Larne, County Antrim BT40 3PH – detached bungalow constructed in 2000, GEA of 204.00 m², ancillary space of GEA 24.85 m², garage of GEA 49.70 m². Again, no reference is made to issues of water supply, electricity and sewerage or any internal circumstances. The photographic evidence is of a ground level view (again, without showing the entire view of the property) and this property is located circa 1.50 miles North-west of the subject property. The Capital Value is £250,000.
- 2 Waterfall Road, Larne, County Antrim BT40 3LE – detached bungalow constructed in 1983, GEA of 241.00 m², garage of GEA 51.50 m². Again, no reference is made to issues of water supply, electricity and sewerage or any internal circumstances. The photographic evidence is of an aerial view with no ground level view provided. This property is located circa 2.50 miles North-west of the subject property. The Capital Value is £260,000.
- 5 Ballylesson Road, Larne, County Antrim BT40 3HL – detached bungalow constructed in 1987, GEA of 185.00 m², garage of GEA 37.50 m², outbuildings of GEA 81.40 m². There is no reference made to issues of water supply, electricity and sewerage or any internal circumstances. The photographic evidence is of rather poor quality and in black and white, of a ground level view which made the characteristics and circumstances of the property from that source difficult to decipher. This property is located circa 2.50 miles North-east of the subject property. The Capital Value is £205,000.

The tribunal would wish to record the observation, at this point, that the tribunal's task was made rather more difficult on account of the nature and quality of a part of the foregoing evidence. For her part, the appellant has not made specific comment in her appeal and associated submissions concerning any of these selected comparable properties, nor has she sought specifically to challenge the capital valuations ascribed to any of these six hereditaments which are introduced in evidence as comparables by the respondent.

THE TRIBUNAL'S DECISION

11. Article 54 of the 1977 Order enables a person to appeal to this tribunal against the decision of the Commissioner, being the respondent to this appeal, regarding capital value. In this case, the capital value at AVD of the subject property has been assessed at £210,000. The appellant's first contention, in effect, seeks to challenge capital valuation based upon the antecedent valuation date (AVD) regime. Here, the appellant disputes, as she puts it, "*...being charged 2005 prices, which are hugely inflated by today's market value*". She contends that she has been, in effect, overcharged and that this is illegal. This contention put forward by the appellant may be easily addressed by the tribunal as it arises from a regrettable, but nonetheless fairly common, misunderstanding of the capital valuation rating regime which has been encountered upon many previous occasions by the tribunal. Indeed, it may be fair to say that it is the most commonly encountered misunderstanding emerging in appeals which are brought to the tribunal.
12. The statutory position is that all capital valuations are required to be conducted in reference to AVD, pending any possible future revaluation. As has been mentioned above, AVD is the date to which reference is made for the assessment of capital values in the Valuation List. Until a further domestic property revaluation occurs therefore, capital values are notionally assessed as at 1 January 2005, that date being the AVD for the purposes of the statutory domestic rating scheme. The legislation, at Schedule 12, paragraph 7 of the 1977 Order, as amended, provides that the capital value of a hereditament shall be (upon the assumptions mentioned) the amount which the hereditament might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date. Accordingly, to contend, as the appellant does, that she has a proper

and legitimate dispute concerning “...being charged 2005 prices...” is a contention, which cannot be accepted by the tribunal. A proper understanding of the valuation regime focuses upon the comparison of different properties, all of which are equally assessed with reference to AVD values. The respondent’s contentions directed the tribunal to the case of ***Dawkings (Valuation Officer) v Ash Brothers & Heaton Ltd (1969) 2 AC 336*** in which case Lord Pearce stated: “Rating seeks a standard by which every hereditament in this country can be measured in relation to every other hereditament. It is not seeking to establish the true value of any particular hereditament, but rather its value in comparison with the respective values of the rest.” There is further reference made in the submission to the cases determined by this tribunal in ***Michael Ballantyne v Commissioner of Valuation [NVT 16/14]*** and ***Gerard Heaney v Commissioner of Valuation [NVT 74/12]***. Seen in this way, it is hoped that the appellant shall comprehend that the statutory regime, in fundamental terms, which has been applied to her capital valuation, is a statutory regime which is required to be applied to all domestic hereditaments upon an equal basis. For this reason, the appellant's first contention is misconceived and it is rejected by the tribunal as being a proper ground of appeal.

13. Turning then to the appellant's second contention, here the appellant argues that the subject property is subject to significant situational disadvantage. She has alluded to her dispute with the respondent where she objects to being charged rates, which are based, as she contends, upon her house type and size but with, so she believes, no consideration being afforded to the lack of amenities and services. She has not stated, in her view, what the proper capital valuation ought to be.
14. The contention made on behalf of the respondent is that individual services provided by local Councils are not reflected in each capital value assessment. The respondent has directed the tribunal's attention to the comparables, which are stated to be located within the same Council Ward (Ballycarry and Glynn) and the same neighbourhood (Ballyboley) as is the subject property and, like the subject property, each is a detached bungalow. It is observed that the appellant has not provided details of comparable properties which would support the opinion that the Capital Value of subject property should be revised, nor has any indication been provided as to what figure the Capital Value ought properly to be revised. One further argument advanced on behalf of the respondent is that the presence and utilisation of one's

own drinking water source does not result in any entitlement to a reduction in the Capital Value of a domestic property.

15. In the light of these arguments, the tribunal examined the comparables set forth in the Presentation of Evidence to assess whether they were in the same state and circumstances as the subject property for comparative purposes and to address any issues raised by the appellant in this regard. Dealing firstly with two specific issues which have been raised by the appellant, the first of these relates to the access from the subject property onto the main road, which the appellant contends is extremely dangerous. There is no specific evidence to support this and to enable the tribunal properly to reach the conclusion that the subject property is any more disadvantaged than any of the other comparable properties. The same applies to the quality of the roadway, to maintenance and gritting and to hedge-trimming and also road lighting. Secondly, in regard to the private water supply, there was no evidence forthcoming concerning whether or not a public water supply was potentially available to serve the subject property and whether or not the appellant perhaps chose not to access any potentially available supply, for whatever reason. On the balance of the evidence, the tribunal could not reach a conclusion that these foregoing were issues properly supporting a determination that the capital valuation of the subject property ought to be reduced.
16. In respect of the comparables, whilst there are some deficiencies in terms of the evidence (which matter has been mentioned above) the tribunal nonetheless found some evidence emerging, particularly from the most proximate comparables, which was quite useful. The tribunal accordingly conducted a careful assessment of any available evidence in terms of location and circumstances and corresponding capital valuations, leaving aside, for the moment, the situational disadvantage issues raised by the appellant. Whilst there were some potential anomalies observed and indeed some possible marginal undervaluations, nonetheless, the general tenor of that part of the evidence which was determined to be useful, in the opinion the tribunal tended to support the correctness of the capital valuation which has been ascribed to the subject property by the respondent.
17. As the tribunal has often observed in its decision-making, there exists a statutory presumption which is contained within the 1977 Order, at Article 54(3). On account of this, any valuation shown in a Valuation List with respect to a hereditament shall

be deemed to be correct until the contrary is shown. For this reason, in order to succeed in an appeal, any appellant must either successfully challenge and displace that statutory presumption of correctness or perhaps the Commissioner's decision on appeal, objectively viewed, must be seen by the tribunal to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the capital value to an appropriate figure.

18. The tribunal, in assessing this appeal, saw nothing in the general approach taken to suggest that the matter had been approached for assessment in anything other than the prescribed manner, as is provided for in Schedule 12 of the 1977 Order. This being so, the tribunal examined the essential issue of whether or not the appellant had put forward sufficient challenge to the respondent's schedule of comparables and sufficient evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation.
19. Noting the arguments made on behalf of the appellant and the responses thereto, the statutory provisions specify that the capital value of the property shall be the amount which (on the statutory assumptions) the property might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date. Further, in estimating the capital value regard shall be had to the capital values of comparable properties in the same state and circumstances as the subject property. The tribunal, in conducting this exercise, gave full consideration to all of the relevant evidence and argument including an analysis of the appropriateness of selection and the weight to be attached to the properties put forward as comparables on behalf of the respondent, the appellant herself not having introduced into evidence any specific alternative comparables.
20. The tribunal examined the six stated comparables. The tribunal conducted an analysis of the specific state and circumstances in respect of each of these, with reference to any material evidence emerging which might assist in the scrutiny of the assessment of the proper capital valuation of the subject property. The appellant, as mentioned, has not directly challenged any of these comparables but instead has based her appeal in this regard upon the situational or locational disadvantage of the subject property. The difficulty for the appellant is that, in the absence of any additional evidence of alternative comparables, the tribunal has found some useful evidence to be gained from these comparables which supports the assessed capital valuation.

Thus, the only real ground of appeal which remains to assist the appellant relates to the submitted situational disadvantage. In examining this, the tribunal's conclusion is that there is no material, persuasive, evidence that the subject property is in any more of a disadvantageous situation or location than are the relevant comparable properties. Upon the basis of this latter conclusion, the appeal cannot succeed.

21. Accordingly, the tribunal's unanimous decision is that the appellant has not put forward sufficient evidence and argument effectively to displace the statutory presumption of correctness in respect of the capital valuation applied to the subject property. As no grounds made out by the appellant in this appeal are accordingly upheld by the tribunal, for that reason the appeal is dismissed by the tribunal.

James V Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: September 2016