

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: 45/15

CHRISTY FABRO & DEREK POOLE - APPELLANTS
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

**DECISION OF PRESIDENT OF THE NORTHERN IRELAND VALUATION
TRIBUNAL ON APPLICATION FOR LEAVE TO APPEAL TO THE LANDS
TRIBUNAL**

I do not grant leave to the appellants to appeal to the Lands Tribunal, for the reasons stated below.

REASONS

Introduction

1. The appellants in this matter appealed under article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order") against the decision of the Commissioner of Valuation in respect of a hereditament situated at number 17 Holland Park, Ballymena BT43 6JS ("the Property").
2. The appellants had requested an oral hearing and a hearing of the appellants' appeal took place on 11 January 2017, with Mr Poole representing both appellants. By decision with reasons promulgated by the tribunal on 19 January 2017 ("the Decision") the tribunal's determination as set forth in the Decision was that the appeal should be dismissed. A copy of the Decision was sent to the parties to the appeal, including to the appellants. The appellants by letter ("the review letter") dated 27 January 2017 sought a statutory review of the Decision. The two specified grounds as set forth in the review letter (with details slightly modified to make matters clear) as mentioned in the Review Decision were as follows:-
 - (i) At no stage were the appellants informed by Land and Property Services (hereinafter LPS) that the removal of the Property from the Valuation List from 30 July 2014 to 16 December 2015 was a temporary suspension. LPS did not inform the appellants that the suspension was temporary and LPS had accepted this during the course of the hearing;
 - (ii) The removal (sic) of the Property from the Valuation List came about as a result of an external inspection on the 16 December 2015. On that date the Property was in exactly the same condition as during the inspection on the 6

May 2015; that same decision should have been made following the external inspection on the 16 December 2015. In regard to this latter ground, as stated in the Review Decision, there appears to be an error. The facts appear to be that in July 2015, the Property was removed from the Valuation List by the respondent, effective from 30 July 2014. This was as a result of an inspection conducted by the respondent in May 2015. There then followed a further external inspection in December 2015 and it was this latter that caused the property to be returned to the Valuation List. It is therefore presumed that the words, "removal of the Property from the Valuation List", in the Review Decision ought to read, "reinstatement of the Property in the Valuation List".

An additional (third) ground was raised at an oral hearing of the review application ("the Review Hearing") which proceeded on 27 July 2017, that additional ground being as follows:-

(iii) The appellants (or at least Mr Poole) owned and developed a number of houses and in Mr Poole's experience the Belfast Office of LPS (the instant case concerned the Ballymena Office) was content to allow properties under development to be removed from the Valuation List until the developer informed the Office that renovations (on any relevant) property) had been completed.

3. By decision, with reasons consequent upon the Review Hearing ("the Review Decision"), promulgated by the tribunal on 1 November 2017 the tribunal's determination as set forth in the Review Decision was that the "Appellant" (presumably this is intended to refer to both appellants) had not made out any of the grounds justifying relief pursuant to Rule 21 of the Valuation Tribunal Rules (Northern Ireland) 2007 (as amended) (hereinafter referred to as "the Rules") and that the Decision remained unaffected.
4. By letter ("the appeal request letter") dated 8 November 2017 received by the Secretary to the Tribunal on 13 November 2017 Mr Poole wrote to the President of the Valuation Tribunal. In making this determination I shall make the presumption that Mr Poole has written on behalf of both appellants. In the appeal request letter Mr Poole seeks leave to appeal the Decision (and presumably the Review Decision), expressing it thus: "*Please note that I wish to request leave to apply for a review the decision as I believe the decision of the Tribunal is wrong*". I shall hereinafter treat Mr Poole's letter as being a request made on behalf of both appellants and I thus refer hereinafter to "the appellants" accordingly. The appellants in the appeal request letter do not expressly seek leave to appeal the case to the Lands Tribunal. However, as that is the only statutory route available to the appellants, I shall treat the appeal request letter as constituting a request made by the appellants to the President of the Valuation Tribunal for leave to appeal the Decision (and the Review Decision) to the Lands Tribunal, under the statutory provisions now mentioned.

The Applicable Law

5. 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.”

The Determination

6. I have carefully perused the Decision and the Review Decision in the light of the issues raised in the appeal request letter as a basis for seeking leave to appeal. I note that the points raised in the appeal request letter appear to reference expressly only the Review Decision and specific issues emerging from that. Notwithstanding this, I have extended my scrutiny to include both

the Decision and also the Review Decision. I have, further, considered any information concerning the manner in which the hearings were conducted by the tribunal and I have deliberated upon the procedure engaged in the management of the hearings and, generally, by the tribunal. I have endeavoured to consider, insofar as possible, any issue emerging going beyond mere dissatisfaction on the appellants' part with the outcome, which might properly constitute a substantive, proper and persuasive basis upon which leave to appeal might be granted to the appellants.

7. The appeal request letter sets forth particulars of the grounds upon which such a request for leave is made. Upon reading the appeal letter, to summarise the content, I distil the following points made in submissions in regard to the granting of leave to appeal in this matter.

- 7.1 The Tribunal did not give adequate weight to the evidence (specifically in the context of the review process and the Review Decision) materially, in reference to the contention that the Premises were deregistered on 30 July 2014 and the suspension was removed following a further external inspection on 16 December 2015 and the contention that there had been no changes to the Premises in the interim. The contention here is that the appellants cannot understand how two external inspections of the same Premises could come to a different result without one of them being in error.

- 7.2 LPS had accepted that the appellants were not informed in writing that the suspension was temporary, with the corresponding submission being made that failure to inform the appellants in writing of this fact was also an error.

- 7.3 In paragraph 10 of the Review Decision the tribunal states that the appellants' argument regarding differing procedure stated to be operated by the respective Belfast and Ballymena District Offices (of LPS) must fail because it could not constitute "new evidence", as it was known to the appellants at the time of the initial hearing. It is asserted that it is unfair to hold against the appellants in this manner as the appellants are not legally qualified and were not aware of the effect of this rule.

- 7.4 In paragraph 12 of the Review Decision, the tribunal states that "it is inconceivable" that the appellants (or at least Mr Poole) believed that the Property would remain suspended from the Valuation List for an indefinite period of time. The assertion is made that the appellants are aware of other premises which have been deregistered for an indefinite period of time of several years and the tribunal's decision flies in the face of the appellants' knowledge that this has happened in other cases.

- 7.5 The tribunal has also referred to the fact that the appellants (or at least Mr Poole) received a telephone call from the Valuation Office concerning the matter. It is asserted that this telephone call was simply a short message left on a phone requesting the appellants (or at least Mr Poole) to phone them back. It is asserted that no details were given of what the telephone call was about or to which property it related.

7.6 It is asserted that at no stage of the proceedings had the appellants been informed of the relevant policy and were not given any timescales at the time of the original application nor informed of the respondent's ongoing policy in this area. The appellants therefore cannot judge the respondent's treatment against treatment of others in similar circumstances. The decisions of both the respondent and also of the tribunal (presumably in the latter case referring both to the Decision and the Review Decision) are unfair and contrary to the interests of justice.

8. Dealing with these contentions in turn, the first contention is that the tribunal did not give adequate weight to the evidence (specifically in the Review Decision) in reference to the contention that the Premises were deregistered in July 2014 and the suspension was removed following a further external inspection in December 2015. In this regard I have examined both the Decision and the Review Decision. In general terms, I have noted some self-evident deficiencies in the Decision-drafting in regard to such matters as consistency of descriptions and indeed a number of typographical errors and mistakes; this is regrettable. However, my task is to look beyond anything inconsequential or insubstantial in order to discern material issues of real substance, including any manifest errors in the affording of proper, fair and proportionate procedure to the parties to this appeal, or any deficiencies in the proper application of the relevant statutory provisions and principles of law to the case. Having conducted this examination, I note that the tribunal in the Decision does refer expressly to the District Valuer awarding a temporary removal of the Property from the Valuation List and to the evidence given on behalf of the respondent that this removal was a temporary suspension only. The tribunal has also, in summary terms, in the Decision recited certain evidence given by Mr Poole and also Mr Poole's relevant submissions. The tribunal has also recorded, specifically, that the appellants accepted that any removal from the Valuation List whilst renovations were taking place must have had an end date. The appellants' contention advanced accordingly, in seeking leave to appeal, is that the tribunal has failed to accord due and proper weight to the available evidence. The matter of attribution of weight to evidence is normally a matter within a broad discretion vested in each tribunal, as constituted, subject to the important caveat that the application of this broad discretion does not stray beyond what is judicial, reasonable and permissible. Albeit in somewhat sparse, but in nonetheless relatively clear, terms the tribunal has given an account of how it determined this issue. The deciding factor for the tribunal was that, whilst the appellants asserted that if it had been known that the removal of the Property from the Valuation List was temporary, renovations would have been completed in a more timely fashion; nonetheless the failure to do this, once notified of the respondent's decision to return the Property to the Valuation List, did not support this assertion. In the application for a review, it had been asserted that the Decision was wrong because of an error on the part of the Valuation Tribunal. It appears that the appellants have construed this statutory head of review as arising from a dispute concerning the correctness of the Decision in regard to the foregoing issue. In the Review Decision, the tribunal has referred to the specific statutory ground (this being Rule 21(1) (a) of the Rules. This provision, the

tribunal states in the Review Decision, is designed to correct obvious and fundamental flaws which arose because of human error, errors which are self-evident, patent and objectively, clearly erroneous. Examining how the tribunal has interpreted this statutory ground of review and, further, examining the tribunal's Decision and Review Decision in that respect, I do not determine from this approach to the evidence and corresponding decision-making by the tribunal, both at first instance and also in review, that this gives rise to any issue upon which leave to appeal ought properly to be granted to the appellants.

9. The second contention is that LPS had accepted that the appellants were not informed in writing that the suspension was temporary, with the corresponding submission that failure to inform the appellants in writing of this fact was also an error. I note that in the Decision the tribunal did find that it was most unfortunate that the letter (from LPS) confirming the suspension did not explain that the removal of the Property from the Valuation List from 30 July 2014 to 16 December 2015 was a temporary suspension, nor did it indicate how long the suspension would be effective. Again, we are brought back to the subsequent portion of the Decision following immediately after these observations, which is as mentioned above. In the Review Decision, the tribunal addressed the pertinent statutory power of review (Rule 21(1) (a) of the Rules mentioned above). This statutory power focuses upon whether a Decision was wrong because of an error on the part of the tribunal or its staff. The tribunal has correctly assessed and applied the statutory review provision in this respect. Given this to be so, I do not determine that this gives rise to any issue upon which leave to appeal ought properly to be granted to the appellants.

10. The third contention is that (referencing paragraph 10 of the Review Decision) the tribunal states that the appellants' argument regarding differing procedure asserted to be operated by the Belfast and Ballymena District Offices (of LPS) must fail because it could not constitute "new evidence" as it was known to the appellants at the time of the initial hearing. In regard to this point the appellants have asserted that it is unfair to hold against the appellants as the appellants were not legally qualified and were not aware of the effect of this rule. I assess this argument to be of little substance. Rule 21(1)(c) of the Rules permits a review where new evidence, to which the Decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then. Any issue concerning whether or not one or more of the appellants is, or is not, legally qualified and were, or were not, aware of the effect of this provision, is of no consequence. The majority of appellants who appear before the Valuation Tribunal are not legally qualified; in most cases they are unrepresented. The assessment of any material issues pertinent to Rule 21(1) (c) of the Rules is a matter of evidence and the drawing of material facts from such evidence, in the statutory context. I do not determine that any issue emerges from this upon which leave to appeal ought properly to be granted to the appellants.

11. The fourth contention alludes to paragraph 12 of the Review Decision, where the tribunal records that "it is inconceivable" (as the tribunal puts it) that the appellants (or at least Mr Poole) believed that the Property would remain suspended from inclusion in the Valuation List for an indefinite period of time. In seeking leave to appeal, the assertion is made that the appellants are aware of other premises which have been deregistered for an indefinite period of time of several years and the tribunal's decision flies in the face of the appellants' knowledge that this has happened in other cases. I note that this point constituted the third matter advanced in the review hearing and that it has been addressed in paragraph 10 of the Review Decision, in respect of the Rule 21(1) (c) of the Rules (the new evidence point). The matter is also mentioned in paragraph 12 of the Review Decision. In that paragraph, the tribunal has formed a view which is within the broad margin of discretion available to the tribunal to the effect that the tribunal did not accept that the appellants believed that the Property would remain suspended from the Valuation List for an indefinite period of time. Nothing arises from the tribunal's conclusion in that regard so as to bring the matter within the remit of a proper issue upon which leave to appeal ought to be granted to the appellants.

12. The next and fifth contention mentions that the tribunal has referred to the fact that the appellants (or at least Mr Poole) received a telephone call from the Valuation Office concerning the matter. It is asserted that this telephone call was simply a short message left on a phone requesting the appellants (or at least Mr Poole) to phone them back. It is asserted that no details were given of what the telephone call was about or to which property it related. This appears to be a repetition of evidence which was placed before the tribunal at the initial hearing and this has been considered by the tribunal in reaching its conclusions set forth in the Decision. There is nothing to cause me to conclude that the tribunal's manner of dealing with this specific evidence was manifestly unfair or perverse or that no due and proper weight was accorded to this evidence and any determination made as a consequence. Nothing accordingly arises to cause this to be a proper issue upon which leave to appeal ought to be granted to the appellants.

13. The sixth and final contention advanced on behalf of the appellants is the assertion that at no stage of the proceedings had the appellants been informed of the relevant policy and were not given any timescales at the time of the original application nor informed of the respondent's ongoing policy in this area. The appellants therefore cannot judge the respondent's treatment against treatment of others in similar circumstances. The decisions of both the respondent and also of the tribunal are thus asserted to be unfair and contrary to the interests of justice. This, to a very large extent, constitutes a repetition of the issues mentioned above and indeed might have been intended as a general summing up in concluding the appeal request letter. This contention does not add anything to the matters addressed above; no specific grounds, in and of themselves, emerge from this assertion. This being the case, nothing arises from this sixth and final contention to enable me to determine that this is a proper issue upon which leave to appeal ought to be granted.

14. I have generally scrutinised the Decision and the Review Decision in order to examine if there emerges any other point of potential procedural or substantive unfairness or any evident misapplication of the relevant law upon which leave to appeal ought properly to be granted. Having done so, I do not determine, both in the light of the points expressly raised by the appellants and also in general terms, in conducting an examination of the decision-making of the tribunal in this case, that there are any proper and substantive grounds emerging from anything scrutinised supporting a case for leave to appeal to be granted to the appellants in this matter. As is mentioned above, in the event of my refusal to grant leave to appeal, any party aggrieved is entitled to apply to the Lands Tribunal for leave to appeal, under the pertinent statutory provisions in that regard.

Dated this 16th day of January 2018

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