

**NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NI) ORDER 1997 (AS AMENDED)
AND THE VALUATION TRIBUNAL RULES (NI) 2007) AS AMENDED)**

**CASE REF: 8/15
JAMES DUFFY – APPELLANT AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT
NORTHERN IRELAND VALUATION TRIBUNAL
DATE OF HEARING: 20TH JUNE 2016**

CHAIRMAN: STEPHEN WRIGHT

MEMBERS: MR HUGH McCORMICK MRICS AND MR DAVID ROSE

DECISION

The tribunal's unanimous decision is that the appeal is partially successful and that the entry of the subject property namely, 93 Ballintempo Road, Belcoo, County Fermanagh BT93 5BB, in the valuation list be amended from £89,000 to £84,000.

Introduction

1. The appellant did not attend the Hearing. The respondent did not attend the Hearing.
2. The appeal was heard by virtue of Rule 11(1) of the Valuation Tribunal Rules (Northern Ireland) 2007 which states “an appeal may be disposed of on the basis of written representations of all parties have given their consent in writing.”
3. The valuation of the property that is subject of appeal is 93 Ballintempo Road Belcoo, Co Fermanagh BT93 5BB, (“the subject property”). The subject property is a 1999 detached house. The size of the property has a gross external area of 114m². The accommodation comprises the three bedrooms, main bathroom and kitchen/dining area. The subject property benefits from oil central heating and UPVC double glazed windows. The property is serviced by mains and water/electric and has a septic sewage system. The house sits in a rural location approximately 4 miles outside the village of Belcoo. Access is via a shared concrete laneway, almost a mile in length.
4. The appellant, by notice of appeal dated the 27th April 2015, appealed against the decision of the Commissioner of Valuation on the issued on the 11 March 2015 and effective from the 1st April 2014 which states that the valuation should be “amended from £89,000 to £30,000 stating inter alia that the property is over valued at £89,000 for reasons set out in his Notice of Appeal.
5. The following documents have been considered by us:-
 - (a) The Notice of Appeal against the valuation for rating purposes (Form 3) dated the 27th April 2015. Valuation Certificate issued on the 11 March 2015.
 - (b) Presentation of Evidence by the Commissioner of Valuation including Appendix 1 and 2, namely photographs and schedule of comparable evidence.

- (c) Valuation Report from Keown Auctioneers dated the 7th January 2015.
- (d) Notice of Appeal to the Commissioner of Valuation.
- (e) Correspondence from Arlene Foster LLB MLA dated the 11 January 2016.
- (f) Response to the Valuation Report from Keown Auctioneers dated the 7th January 2015 by Gary Humphrey MRICS Dip Rating on behalf of the Commissioner of Valuation dated 20 January 2016.
- (g) Further Valuation Report from Keown Auctioneers dated the 18th February 2016.
- (h) Letter from John Duffy dated 18 February 2016 to the NI Valuation Tribunal.
- (i) Email from Arlene Foster of the 4th May 2016 to NIVT and reply from the NIVT dated 12 May 2016.
- (j) Letter from NI Valuation Tribunal dated 27 April 2016 and note of telephone conversation dated 10 May 2016.

THE LAW

6. The statutory provisions are set out in the Rates (Northern Ireland) Order 1977 (“the 1977 Order”) as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (the 2006 Order”). Article 54 of the 1977 Order enables a person to appeal to this Tribunal against the decision of the Commissioner on appeal regarding the capital value.
7. Schedule 12 of the 1977 Order as amended states as follows:
 - “7(1) subject to the provisions of this schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in Paragraphs 9-15, the hereditament might reasonably expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date.
 - (2) in estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised. ...
 - (4) in sub-paragraph (1) “relevant to capital valuation date” means 01st January 2005 or such date as the Department may substitute by order made subject to a negative resolution for the purposes of a new capital valuation list.”
 - (7) Article 54(3) of the 1977 Order provides that on appeal any valuation shown in a valuation list shall be deemed to be correct until the contrary is shown. Thus,

any appellant must successfully challenge and displace the presumption of correctness otherwise the appeal will not be successful.

8. Also of relevance in this appeal by way of background information is Schedule 12 Part I – Farmhouses.
 - (1) The net annual value of a house occupied in connection with agricultural land or a fish farm and used as the dwelling of a person –
 - (a) Whose primary occupation is the carrying on or directing of agricultural or, as the case may be, fish farming operations on that land; or
 - (b) Who is employed in agricultural or; as the case may be fish farming operations on that land in the service of the occupier thereof and is entitled, whether as tenant or otherwise, so to use the house only while so employed, shall so long as the house is so occupied and used, be estimated by reference to the rent at which the house might reasonably be expected to let from year to year if it could not be occupied and used otherwise than as foresaid.
 - (2) The capital value of a house occupied and used as mentioned in paragraph 1 shall be estimated on the assumption (in addition to those mentioned in Part 1) that the house will always be so occupied and used.

THE EVIDENCE AND SUBMISSIONS OF THE APPELLANT

9. The appellant grounds of appeal as set out in their notice of appeal is as follows:
 - (i) ‘There are five families share the laneway to this property, four of which are farming families. The property is overvalued at £89,000. This property is 2 miles off the public road up into a mountain area. Could you give me evidence of how you have valued this property in the region of £89,000? I had an auctioneer who viewed this property and the Auctioneer says this property will be very difficult to sell. Property is not liveable.’
 - (ii) The Appellant initially asserts on his Notice of Appeal that the capital Valuation should be £30,000. Mr Dennis Keown the auctioneer and valuer for the appellant initially stated that the capital valuation should be £55,000. Following correspondence with Gary Humphreys who acted on behalf of the Commissioner for Valuation he drew Mr Keown’s attention to Schedule 12 Paragraph 7(4) of the 1977 Order and the case of *Paul McGlenn v Commissioner of Valuation* NIVT 53/13 where the judgment states, “The present value of the property is, as is often commented upon by this Tribunal irrelevant. The date of assessment is the capital valuation date of the 1st January 2005” In his second report dated the 18th February 2016 Mr McKeown states “that taking all the aspects of the subject property into consideration and being familiar and experienced with property in the area that the value of the subject property should be in the region of £80,000.”
 - (iii) Mr Keown states that the Subject Property is “15 a year old 3 bedroom cottage/Bungalow with accommodation consisting of Kitchen/Dining Room,

Sitting Room, 3 Bedrooms and Bath room. The property is in average condition throughout with some modernisation required and would appear not to have been inhabited for some considerable time. The entire is accessed via a lengthy circ: 2 mile shared laneway with three gates to be opened and closed. Services include Main Water, Electricity and Septic tank.” The second report assesses the value of the property in accordance with the statutory framework as at 2005.

- (iv) In a letter dated 18th February 2016 to the Tribunal Mr Duffy refers to the recent auctioneers report and further states “This property should also receive an allowance due to the fact it is vacant and not suitable for renting due to its isolated location”.

REPRESENTATIONS OF THE RESPONDENT

- 9.1 Karen Grimley the Valuer for the Commission of Valuation first sets out of the history of the subject property.
- 9.2 On the 1st April 2007 domestic properties were assessed by reference to capital values for the first time. The subject property was originally entered into the Valuation List with an unadjusted Capital Value of £105,000. A 20% agricultural allowance had been applied as the property was deemed held with land and occupied by a farmer; therefore the adjusted Capital Value was £84,000.
- 9.3 In October 2011 an internal case was raised following notification of a change in owner/occupier of the property. The property was inspected and resurveyed in April 2014. It was found to be vacant i.e. no longer occupied by a full time farmer and the agricultural relief was removed. No change was made to the original unadjusted Capital Value assessment of £105,000.
- 9.4 In July 2014 an application for revision of the Capital Value was then received from Mr Duffy, on the grounds the property is “old, poor condition and unliveable.” At this stage, LPS staff revisited the subject and it was deemed to be habitable. Thus, the property was retained in the Valuation List, as it was still a hereditament. However, a 10% allowance was awarded to reflect the remote location and the lengthy shared access to the property. The Capital Value was revised from £105,000 to £95,000 accordingly.
- 9.5 In February 2015 Mr Duffy submitted an appeal to the Commissioner of Valuation stating that the property was overvalued and was not suitable to be lived in. Representing the Commissioner, I inspected the property. Having regard to the circumstances and the relevant legislation, it was decided the property was a hereditament and should remain in the Valuation List. I also considered the issues regarding the access to the house and in order to maintain relativity I increased the previous reduction from 10% - 15%, with the effect the Capital Value reduced further from £95,000 to £89,000.
- 9.6 In June 2015 – Mr and Mrs Duffy appealed the Commissioner of Valuation’s decision to the Northern Ireland Valuation Tribunal.

- 9.7 Ms Grimley on behalf of the Commission for Valuation makes the following representations:-
- 9.8 Ms Grimley comments that with regards to the appellant's comment that the property is not liveable, I disagree. The subject house is a modern build with all external walls, roof and chimney structures in sound condition. There are no clear signs of any defects. The windows are UPVC double glazed and fit for purpose and the property benefits from Oil Fired Central Heating. The property has been vacant for 10-12 years; however, it remains in good internal repair. At the time of my inspection there were no major signs of damp, considering the house has been empty and unheated for over 10 years. There was a fitted kitchen, bathroom and fireplace in situ and while some cosmetic work would make the property more comfortable this house could be occupied straight away.
- 9.9 The Capital Value has been assessed in accordance with the Rates (Northern Ireland) Order 1977. Schedule 12 Paragraph 7 defines Capital Value as "... the amount which on the assumptions mentioned in Paragraphs 9 to 15, 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 capital valuation date in the current case is 1st January 2005.
- 9.10 Ms Grimley stated in her report "it is important to clarify that the Capital Value is not representative of the current market or present value of the property and therefore the Capital Value assessment of £89,000 may not reflect what the property is worth in today's open market. Present value has been considered by the Tribunal many times and in *McGlenn v Commissioner of Valuation (Case Ref 53/13)* the Tribunal chairperson commented, "The present value of the property is, as is often commented upon by this Tribunal, irrelevant."
- 9.11 Schedule 12 requires that in cases of revision of a Valuation List "regard shall be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances."
- 9.12 A schedule of comparable evidence was gathered to illustrate the Capital Value assessments of similar properties (please refer to Appendix 2). These selected comparables demonstrate a strong relativity, which supports the original assessment of £105,000. However, as stated by the appellant the property is situated approximately 2 miles off the main county road, along a winding shared laneway. Ms Grimley agreed this was an adverse factor which would impact on the market value of the property and Ms Grimley states that she acknowledged this issue on appeal. A 15% reduction was awarded at that time to reflect this negative factor. This reduction was assessed in line with allowances, which were given on other properties, which were affected by difficult access routes;
- No. 98 Ballintempo Road was awarded a 10% allowance on appeal to the Commissioner of Valuation for its difficult access, which would not be considered as restrictive as the access to the subject property.
 - No. 93A Ballintempo Road is situated along the same-shared laneway as the subject and was reduced by 15% to allow for its difficult access.

In line with these two similarly circumstanced properties, 15% has been considered a fair and reasonable allowance;

Unadjusted CV	£105,000
Less 15%	£15,750

	£89,250
SAY	£89,000

9.13 Ms Grimley correctly in the view of the Tribunal was of the view that the property should remain in the Valuation List. Ms Grimley acknowledged that access to the property is an adverse factor, however, in her view it did not make the property uninhabitable and the appropriate allowance has been awarded to reflect this restrictive access. The Capital Value assessment of £89,000 has been valued in tone and has been assessed in accordance with the provisions of the Rates (Northern Ireland) Order 1977.

DECISION OF THE TRIBUNAL

10.1 The appellant's case to the Tribunal is that the original assessment of the valuation of the property of £89,000 should be reduced to £30,000

10.2 The purpose of the Tribunal is to consider the evidence and apply the relevant Law to the issue of capital valuation. The valuation to the subject property has been assessed in accordance with the legislation contained in the Rates (Northern Ireland) Order 1977. Schedule 12 Paragraph 7 as amended states as follows:

“7(1) subject to the provisions of this schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in Paragraphs 9-15, the hereditament might reasonably expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date”.

“7(2) in estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised”.

10.3 The Tribunal again assert (due to the initial confusion by the appellants auctioneer in this case) that the Capital Value must be assessed in accordance with the Rates (Northern Ireland) Order 1977. Schedule 12 Paragraph 7 defines Capital Value as “... the amount which on assumptions mentioned in Paragraphs 9 to 15, 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 capital valuation date in the current case is 1st January 2005.

10.4 Ms Grimley correctly in the view of the Tribunal was of the view that the property should remain in the Valuation List. Ms Grimley acknowledged that the access to the property is an adverse factor, however, such a factor did not make the property uninhabitable and the appropriate allowance was awarded to reflect this restrictive

access. Given the subject properties isolated location together with all the features of the subject property that falls to be assessed in relation to the capital valuation of the subject property. Mr Keown states that the subject property is on a “2 mile shared laneway with three gates to be opened and closed.” Ms Grimley states that this is an “adverse factor”. The Tribunal note that allowance of 15% have been made by the valuers for this aspect of the subject property. However having reviewed all the evidence in this case the Tribunal are of the view that a 20% allowance should be made for the subject property.

DECISION

11. A schedule of comparable evidence was gathered to illustrate the Capital Value assessments of similar properties to the subject property (I refer to Appendix 2). These selected comparables demonstrate a strong relativity which supports the original assessment of £105,000. Ms Grimley agreed this was an adverse factor, which would impact on the market value of the property, and Ms Grimley states that she acknowledged this issue on appeal. A 15% reduction was awarded at that time to reflect this negative factor a rounded down figure of £89,000. The Tribunal having considered all the evidence and information in this case have concluded that a total allowance of 20% to the capital valuation figure of £105,000, resulting in a capital valuation of £84,000 should be made.

12. The tribunal’s unanimous decision is that the appeal is partially successful and that the entry of the subject property namely, 93 Ballintempo Road, Belcoo, County Fermanagh, BT9 5BB, in the valuation list be amended from £89,000 to £84,000.

**Mr Stephen Wright – Chairman
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties – 6 October 2016