

**NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED)
AND THE VALATION AND TRIBUNAL RULES (NORTHERN IRELAND) 2007
Case Reference: 45/13**

BETWEEN:

**JOHN LIGGETT - APPELLANT
-and-**

**THE COMMISSIONER OF VALUATIONS FOR NORTHERN IRELAND -
RESPONDENT**

**NORTHERN IRELAND VALUATION TRIBUNAL
CHAIRMAN: MR KEITH GIBSON B.L.
MEMBERS: MR PHILIP MURPHY FRICS; MS NOREEN WRIGHT**

INTRODUCTION

1. This appeal was heard on the 20th July 2016 pursuant to Article 54 of the Rates (Northern Ireland) Order 1977 (As Amended). The Appellant, Mr Liggett, appeared and represented himself along with Mr Hampton Hewitt of Markethill Property Sales.

THE APPEAL

2. The Appellant's Notice of Appeal dated the 31st January 2014 related to a decision made on the 8th January 2014 in relation to the capital value of property situate at 76 Madden Road, Tandragee, BT62 2DJ. The property itself, which is a detached bungalow, was built approximately 33 years ago and is in good order, currently tenanted.
3. The property was originally granted an agricultural allowance of 20%, however this was removed following the decision by the Appellant to let the premises privately. In or about 2007 the capital value was assessed at some £170,000, however, the Appellant appealed the decision by way of appeal dated the 5th March 2008. A previously constituted Tribunal heard the Appellant's appeal on the 30th May 2008 and, in the context of this appeal, it is noteworthy that the Tribunal in its decision in 2008 made specific and express comment in relation to a complaint by the Appellant that he had not (prior to the hearing in 2008) had sight of the Respondent's documentation entitled "Presentation of Evidence". At that stage, over 8 years ago, the Appellant was offered the opportunity to consider the documentation or to apply to adjourn the matter. It is recorded in the Tribunal's 2008 decision (a decision not appealed) that the Appellant indicated that he wished the hearing to proceed.

4. The Appellant's submissions at that time was that this property was situate in a very significantly disadvantaged location and that this ought to reduce the capital value to a greater extent than that permitted by Land & Property Services. The Appellant at that time contended that the capital value of the property was not the sum of £152,500 but in the region of £60,000 to £80,000. The Tribunal concluded at that time that a reduction of 10% had been rightly applied on the initial valuation sum of £170,000 to bring the capital value of the property down to the figure of £152,500 and that, given the circumstances of the property, this was fair and reasonable. Mr Liggett's appeal was therefore dismissed. A copy of this decision is contained at Appendix A to this written decision.
5. Mr Liggett shortly thereafter decided to avail of the review provisions contained within Rule 21 of the Valuation Tribunal Rules (Northern Ireland) 2007 for the Tribunal to review its decision. This application was refused and it is clear from a consideration of that review that the main ground relied upon by the Appellant was to the effect that the Tribunal should have adjourned the previous hearing regardless of his own express wish to continue. Understandably, such a ground was rejected by the Review Tribunal. A copy of that review decision is contained at Appendix B to this written decision.

HEARING BEFORE THIS TRIBUNAL

6. On the hearing of this appeal, and mindful of the fact that there had been a previous decision relating to the subject property, the Tribunal enquired of the Appellant on the grounds of this appeal. The Appellant expressly made clear that the grounds of this appeal were exactly the same as ones proffered by him some eight years ago. The Appellant went on to reiterate what he thought were the deficiencies in the previous decision pertaining to the late submission of evidence from the Respondent and his ignorance of the fact that he could challenge the Respondent's evidence. When queried as to the reasons for the delay in making this appeal, the Appellant indicated that he had presumed there would be a revaluation within approximately five years from the previous decision in March 2008 but that when such a revaluation did not occur he took it upon himself to apply for revision.
7. In 2008 this Tribunal ruled on the grounds of appeal proffered by the Appellant. To do so a second time offends against the notion of res judicata and, more especially, that as a matter of public policy, matters should not be re-litigated. In this particular instance, there are no new grounds of appeal and nothing which has changed from the previous decision of this Tribunal. In such circumstances, the prosecution of this appeal by the Appellant cannot be allowed to continue. Judicial resources are finite and the Appellant has already has his bite of the cherry.

8. It is therefore the unanimous decision of this Tribunal that this appeal be dismissed.

Keith Gibson - Chair

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 5 August 2016

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

CASE REFERENCE NUMBER: 01/08

JOHN LIGGETT- APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mrs Siobhan Corr FRICS and Mr Peter Somerville.

Belfast, 30 May 2008

DECISION

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 14 February 2008 is upheld and the appellant's appeal is dismissed.

REASONS

Introduction

This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, Mr Liggett, appeared and represented

himself and Mrs Claire White and Mr Paul Boylan represented the Commissioner as respondent.

The appellant, by appeal form dated 5 March 2008 appealed against the decision of the Commissioner of Valuation for Northern Ireland ("the Commissioner") on appeal dated 14 February 2008 in respect of the valuation of a hereditament situated at 76 Madden Road, Tandragee, County Armagh BT62 2DJ. At the commencement of this hearing, the appellant indicated that, until shortly before the commencement of the hearing, he had not had sight of the respondent's documentation entitled "Presentation of Evidence". The tribunal expressed some concern at that fact and at the possibility that the appellant might have been placed under a significant disadvantage in that regard. Thus the tribunal indicated that if the appellant either wished for more time to consider the documentation or, indeed, to apply to adjourn the matter, the tribunal was quite prepared to accommodate the appellant in that regard. However, after some discussion, the appellant indicated that, in view of the nature of the specific case that he wished to present, he wished the hearing to proceed. He would reserve his position regarding the possibility of applying for an adjournment once he had heard the respondent's case argued. After some further discussion and the tribunal having explained to and discussed with the appellant various issues arising from the foregoing, on the basis of the appellant's decision in that regard, the hearing proceeded. After conclusion of the respondent's case, the appellant then indicated that he did not require any further adjournment nor indeed any more time to consider his position; he was content for the tribunal to proceed to make its decision on foot of the evidence and the arguments that had been advanced in the course of the hearing.

THE LAW

The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). Article 8 of the 2006 Order amended Article 39 of the 1977 Order (the basis of valuation) as follows:-

“8. —(1) In Article 39 of the principal Order (basis of valuation), for paragraph (1) there shall be substituted the following paragraphs—

" (1) - .

(1A) For the purposes of this Order the following hereditaments shall be valued upon an estimate of their capital value—

(a) any dwelling-house;

(b) any private garage;

(c) any private storage premises.

(1B) -.

(1C) -.

(2) In Part I of Schedule 12 to the principal Order (basis of valuation), after paragraph 6 there shall be inserted the following paragraphs—

" Capital value – general rule

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 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.

(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.

(3) The assumptions mentioned in paragraphs 9 to 15 shall apply for the purposes of determining whether one hereditament is a comparable hereditament in the same state and circumstances as another with the omission of sub-paragraphs (2) and (3) of paragraph 12.

(4) In sub-paragraph (1) "relevant capital valuation date" means 1st January 2005

Capital value – the assumptions

8. In this paragraph and paragraphs 9 to 15—

"development" has the meaning given by Article 2(2) of the Planning Order;

"flat", in relation to a building, means a dwelling which is a separate set of premises, whether or not on the same floor, divided horizontally from some other part of the building;

"incumbrance" means any incumbrance, whether capable of being removed by the seller or not, except service charges;

"permitted development" means development for which planning permission is not required or for which no application for planning permission is required;

"Planning Order" means the Planning (Northern Ireland) Order 1991 (NI 11);

"planning permission" has the meaning given by Article 2(2) of the Planning Order;

"rentcharge" has the meaning given by section 27(1) of the Ground Rents Act (Northern Ireland) 2001 (c. 5).

9. The sale is with vacant possession.

10. The estate sold is the fee simple absolute or, in the case of a flat, a lease for 99 years at a nominal rent.

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.

(3) In sub-paragraph (2) "relevant date" means 1st April 2007 or such date as the Department may substitute by order made subject to negative resolution for the purposes of a new capital value list.

13. The hereditament has no development value other than value attributable to permitted development.

14. —(1) A hereditament falling (or deemed to fall) within any sub-paragraph of Article 39(1A) will always fall within that sub-paragraph.

(2) A hereditament falling (or deemed to fall) within paragraph (1B) of Article 39 will always fall within that paragraph.

15. —(1) There has been no relevant contravention of—

(a) any statutory provision; or

(b) any requirement or obligation, whether arising under a statutory provision, an agreement or otherwise.

(2) In sub-paragraph (1) "relevant contravention" means a contravention which would affect the capital value of the hereditament."

The 2006 Order also amended the 1977 Order (regarding appeals) as follows:-

“Appeals from the Commissioner

33. For Article 54 of the principal Order there shall be substituted the following Articles—

" Appeal from decision of Commissioner

54. —(1) Any person, other than the Department, who is aggrieved by—

(a) the decision of the Commissioner under Article 49A or on an appeal under Article 51; or

(b) an alteration made by the Commissioner in a valuation list in consequence of such a decision,

may appeal to the appropriate Tribunal.

(2) On an appeal under this Article the Tribunal may—

(a) make any decision that the Commissioner might have made; and

(b) if any alteration in a valuation list is necessary to give

effect to the decision, direct that the list be altered accordingly.

(3) 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.

(4) In this Order "the appropriate Tribunal" means—

(a) in relation to such appeals as may be prescribed, the Valuation Tribunal;

(b) - . ”

THE EVIDENCE

The appellant gave oral evidence and produced photographs and documents to the tribunal. The tribunal had before it the appellant's form of appeal to the tribunal (Form 3) and copies of various documents including the following:-

1. The Commissioner's Decision on Appeal dated 14 February 2008.
2. A document entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Land and Property Services and submitted to the tribunal for the purposes of the tribunal hearing.
3. Correspondence between the tribunal and the parties.
4. Copy photographs of various properties submitted by the appellant.

THE FACTS

On the basis of such information as was before it the tribunal determined, upon the balance of probabilities, the following facts:-

1. The hereditament consists of a dwellinghouse situated at number 76 Madden Road, Tandragee, County Armagh BT62 2DJ (“the property”). The property is situated adjacent to a farmyard with agricultural buildings which serves a farm of land belonging to the appellant. The property is occupied by a tenant under a tenancy. The appellant is the ratepayer.
2. The property is a detached chalet bungalow of brick and concrete block with tiled pitched roof and single garage. It is situated off a tarmac lane which leads off the main Madden Road approximately one and one half miles from Tandragee. The property has mains electric and water services, a private septic tank system and oil fired central heating. It was constructed around 1981 and has a gross external area of 170 m². The garage has a gross external area of 28m². There are no other residential properties in the immediate locality.
3. The background to the matter appears to be that, upon a tenancy of the property being created by the appellant, the property no longer qualified to be treated as a farmhouse in accordance with Part II of Schedule 12 to the 1977 Order. In her evidence to the tribunal, Mrs White clarified that there was a policy of capital value adjustment of farmhouse properties which met the foregoing statutory criteria contained in Part II of Schedule 12 to the 1977 Order by applying a reduction of 20% to any such properties in the valuation list. The property did not qualify for that reduction. However, taking into account the particular situation of the property (more of which below) an allowance of 10% had been applied in arriving at the subject capital value of £152,500 at Antecedent Valuation Date, that date of course being 1 January 2005 (“AVD”). Thus it was argued that, without this allowance of 10% being applied, the applicable capital value would have been £170,000.

4. In her "Presentation of Evidence" Mrs White provided summary details of five properties all situated within a three mile radius of the property and stated to be comparable to the property for valuation purposes. These included three capital value assessments which were stated to be "unchallenged" and two sales. It is unnecessary to go into the details in respect of these in this decision for the reason that the appellant made clear to the tribunal that these comparables were not specifically challenged by him. Indeed the appellant stated that he took no issue whatsoever with a capital value assessment in respect of the property of £170,000 if the property had been differently located. He clarified that his appeal was entirely in respect of the particularly disadvantaged location of the property; that was the only reason why he felt that the capital value as assessed by the Commissioner was significantly higher than the property would have fetched in an open market sale at AVD.

5. The foregoing being the case, the Tribunal was able to narrow down the factual issues for consideration significantly and the Tribunal did not need to determine any further findings of fact for the purposes of making its decision in this case.

THE APPELLANT'S SUBMISSION

The appellant made the submission that the tribunal properly has to have regard to the fact that this is a property situated in a very significantly disadvantaged location and that fact ought to significantly reduce the capital value. The appellant indicated that he farmed the adjoining lands and used the agricultural sheds and outbuildings (these can clearly be seen from the photographs supplied) situated immediately adjacent to the property. There are no other residential properties in the immediate locality. The property can only be reached by travelling along a lengthy laneway that serves only to access the property and the adjacent farm buildings. The appellant suggested to the tribunal that he had encountered some difficulty in finding a tenant for the property. Now there was a tenant residing in the property. However, it would be rather difficult to market the property for sale without also selling the entire farm.

In support of his submission the appellant produced letters from two local estate agents. The first of these, Next Move Property Sales of Tandragee, by letter dated 27 March 2008 stated that the property was located in the middle of a working farmyard and therefore would be difficult to sell and would not be marketable on its own and could only be a let property. No capital value was suggested. The second consisted of a letter dated 27 March 2008 from Smyth Properties of Tandragee that stated that the dwelling was situated approximately 1.5 miles from the town (of Tandragee). It had been built about 35 years before specifically as a farm dwelling. It was therefore a part of the farmyard with all of the inherent disadvantages. In Mr Smyth's opinion, that left the property unsuitable as far as investment value was concerned. The dwelling also required considerable updating of the kitchen and bathroom etc. The market value at 1 January 2005 (AVD) was stated to be £75,000.

The appellant in his representations has made it entirely clear that if the property were to be located (as were some properties in respect of which the appellant very helpfully produced photographs to assist the tribunal) close to a main road with a road frontage and agricultural buildings situated only to the side or to the rear of the property, he would not question in any way a capital value of £170,000 being applied to the property. His argument thus was entirely about the situation of the property and nothing more than that.

THE TRIBUNAL'S DECISION

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 AVD at a figure of £152,500. On behalf of the Commissioner it has been contended that that 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. It is to be noted that there is an important statutory presumption contained in Article 54(3) of the 1977 Order which provides: "*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 that

presumption, or perhaps for the Commissioner's decision to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.

The tribunal saw nothing in the approach adopted to achieve the initial assessment as to capital value, nor in the decision of the Commissioner on appeal, to suggest that the matter had been assessed in anything other than the prescribed manner provided for by Schedule 12, paragraphs 7 (and following) of the 1977 Order. Indeed the appellant took no issue in respect of the capital value save as regards the particularly disadvantaged circumstances which he has argued applied to the property.

As there is nothing wrong per se with the Commissioner's approach, the tribunal considered whether the appellant had satisfactorily argued a case to displace the statutory presumption. The argument made by the appellant is really quite straightforward. The single issue for the tribunal to consider is whether or not the 10% reduction in the capital value that has actually been applied to the property in this case properly reflects a fair and true assessment of the capital value of the property, situated as it is in a somewhat disadvantaged location.

For the Commissioner, it is argued that the reduction already granted properly reflects the particular situation of the property. Indeed it is argued that the maximum capital value reduction which would otherwise have been applicable to the property (had it been situated in the middle of a working farm and had the benefit of the statutory provisions contained in Part II of Schedule 12 to the 1977 Order) would have been 20% and no more. Against that, the appellant argues that the capital value ought to be very significantly lower and in his appeal he suggests a capital value of £60,000 - £80,000.

The report dated 27 March 2008 from Next Move Property Sales is not particularly helpful as this merely states that the property would be difficult to sell and would not be marketable on its own; no capital value is suggested. The second report, that dated 27 March 2008 from Smyth Properties, suggests a capital value at AVD of £75,000. There is no additional detail provided in that report as to how the figure of £75,000 is arrived at, nor any hint as to the valuation mechanism employed in assessing such a figure. The report indeed makes comment upon the property

requiring considerable updating to kitchen, bathroom etc. However, as is mentioned above, regarding that latter observation there is a statutory assumption that 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. The tribunal has no way of ascertaining how that latter consideration might have affected the suggested valuation figure.

In contrast to this, the tribunal is rather more persuaded by the evidence and submission made on behalf of the Commissioner to the effect that, having taken account of the full range of the disadvantages affecting any dwellinghouse that is situated in the middle of a working farm (noise, smell, dangers from agricultural equipment etc.) a capital value reduction of 20%, at maximum, is properly applicable in cases which properly qualify under the statutory provisions. From the submission made on behalf of the Commissioner, it is understood that that figure of 20% has been arrived at after considerable discussions and negotiations with various agricultural and farming interests, including Ulster Farmers' Union representatives, and it is generally regarded as being fair and reasonable, taking everything into account. However, the appellant argues for a reduction of something more in the order of 50 - 60%. Having made that argument, the appellant has not supported his case with anything other than a valuation report from a local estate agent, Mr Smyth, which report regrettably does not assist the tribunal by indicating precisely how the suggested valuation figure of £75,000 has been assessed.

THE TRIBUNAL'S CONCLUSION

The tribunal is very grateful to the appellant, Mr Liggett, for taking the time to come to the tribunal and to present his evidence and arguments in such a clear and forthright manner. Nonetheless, examining the facts of the matter and the arguments and submissions, the tribunal's unanimous decision is that the appellant has failed to displace the statutory presumption. The tribunal is of the view that the reduction of 10% that has already been afforded, given the particular circumstances of this property, is fair and reasonable. Thus the Commissioner's Decision on Appeal is upheld and the appeal is dismissed.

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

Date decision recorded in register and issued to parties: 30 May 2008

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

CASE REFERENCE NUMBER: 01/08

JOHN LIGGETT- APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Ms Siobhan Corr MRICS and Mr Peter Somerville.

Belfast, 28 November 2008

DECISION ON REVIEW

The unanimous decision of the Tribunal is that there are no proper grounds made out by the appellant to enable the Tribunal to review the decision of the Tribunal promulgated on 5 June 2008 and thus the Tribunal's decision shall not be reviewed and the appellant's application for review is dismissed.

REASONS

Introduction

1. This is a review of the Tribunal's decision ("the decision") in respect of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The decision was issued to the parties by the Secretary of the Northern Ireland Valuation Tribunal ("the Secretary") on 5

June 2008. The Secretary received a letter dated 11 June 2008 from the appellant requesting the Tribunal to review the decision. The respondent was duly notified of that application and objected to a review hearing.

2. In a memorandum dated 21 August 2008 sent to the Secretary on behalf of the respondent there were identified two possible grounds of review which it was felt were being put forward by the appellant. These were, firstly, the ground of “new evidence” and, secondly, the ground “interests of justice”. It was contended on behalf of the respondent in the said memorandum that both of these grounds were inapplicable to the case. That memorandum was copied to the appellant by the Secretary.
3. The appellant then sent further written submissions to the Tribunal, undated, but received by the Secretary on 11 September 2008. The content of these submissions will be briefly referred to below. An oral hearing duly proceeded on 28 November 2008. The appellant, Mr Liggett, attended, accompanied by Mr Smyth.

THE APPLICABLE LAW

4. The Valuation Tribunal Rules (Northern Ireland) 2007 (“the Rules”) provide at Rule 21 as follows in respect of review of any decision of the Tribunal:-

“21.—(1) If, on the application of a party or on its own initiative, the Valuation Tribunal is satisfied that—

(a) its decision was wrong because of an error on the part of the Valuation Tribunal or its staff; or

(b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented; or

(c) 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; or

(d) otherwise the interests of justice require,

the Valuation Tribunal may review the relevant decision.

THE HEARING AND THE ARGUMENTS

5. The Tribunal at the outset of the hearing clarified to the appellant the foregoing statutory grounds available to the Tribunal to conduct a review of any decision. The Tribunal, firstly, explained to the appellant that he would have to initially establish proper grounds upon which the Tribunal might proceed to review the decision. If he failed to do that the review could not proceed. Then, the Tribunal discussed with the appellant which of the four possible statutory grounds available might properly be applicable to his review request. After some discussion (and indeed following assistance provided to the appellant on the Tribunal's part in identifying appropriate potential grounds), the appellant identified the grounds respectively contained within Rule 21 (b) (c) & (d) of the Rules. The Tribunal then heard argument on the appellant's part as to why the Tribunal should properly review the decision on foot of each of these three grounds.

THE APPELLANT'S ARGUMENTS

6. Taking these in turn, the appellant's arguments in respect of each of the said grounds were as follows:

Rule 21 (b) (a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented).

The appellant contended that he had not had sight of the respondent's documentation entitled "Presentation of Evidence" until shortly before the commencement of the original hearing. His witness Mr Smyth (brought by him today to give evidence to the Tribunal) would have probably attended the original hearing of the matter if the appellant had received the respondent's document "Presentation of Evidence" a sufficient time in advance of the hearing to enable him to decide if a witness had to be called. Thus the

appellant identified the source of the difficulty in this regard as stemming entirely from late receipt of the “Presentation of Evidence”.

Rule 21 (c) (*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*)

Again, connected with the late receipt of the “Presentation of Evidence”, the appellant confirmed that the new evidence (which he hoped now was to be permitted to be provided to the Tribunal) consisted of an elaboration of some evidence which had already been placed before the Tribunal, but by way of further clarification. He contended that this additional evidence could not reasonably have been known or foreseen before the original hearing on account of the fact that the appellant was unable to identify what evidence he might require to produce in order to counter the evidence of the respondent.

Rule 21 (d) (*otherwise the interests of justice require*) (a review)

Again, (prompted to an extent by the Tribunal’s explanation to the appellant of the nature and extent of this potential head of review) connected with the late receipt of the “Presentation of Evidence”, the appellant contended that the late receipt of the respondent’s evidence was unfair and thus ought to have resulted in the Tribunal adjourning the matter. Whilst it was accepted by the appellant that the Chairman had expressed concern at the hearing and had indeed requested the appellant to take some time to read this evidence and had then asked the appellant if he wished to continue, it was not clear to the appellant that if he refused to proceed he would not be disadvantaged. The appellant contended that he was not legally represented and the significance of the evidence was not clear to him.

In addition to the foregoing, the appellant also contended, in general terms, that the Tribunal had disregarded the valuation evidence which was placed before the Tribunal by him at the original hearing in order to assist his case.

THE TRIBUNAL'S DETERMINATION OF THE ISSUE

7. The Tribunal notes the statutory power available to it on foot of Rule 21 of the Rules. The appellant has endeavoured to make out a case on three statutory grounds that the Tribunal is entitled to conduct a review of its decision on these three grounds. The respondent has opposed that. In determining the issue, the Tribunal has identified as being a key consideration in the case the matter of the late receipt by the appellant of the Presentation of Evidence from the respondent.

8. Leaving that rather important consideration aside briefly, the Tribunal further notes that the appellant has also endeavoured to argue that the Tribunal has had no regard to the evidence which the appellant has put forward concerning valuation and concerning the special circumstances attaching to the subject property which evidence, the appellant has contended, ought to have resulted in his appeal being successful. In respect of this latter issue, the Tribunal cannot see how the appellant has made out any sustainable or persuasive case on any of the three said grounds of possible review. The Tribunal's decision has recorded in summary form the essential findings of fact derived from evidential material which was placed before it. The Tribunal has considered the submissions and the arguments made in the course of the original hearing and the Tribunal has dealt with and has disposed of these in its decision. The only apparent statutory ground of review which might conceivably apply to this latter contention would be the "*interests of justice*" ground (that is to say Rule 21 (d)). In the absence of any identified authority within the Tribunal's own (and comparatively recent) jurisdiction being drawn to the Tribunal's attention, the Tribunal is of the view that the "*interests of justice*" ground ought properly to be construed fairly narrowly; that certainly appears to be the accepted practice in other statutory tribunal jurisdictions. Thus the "*interests of justice*" ground might be seen to apply to situations such as, for example, where there has been some type of what might be termed "a procedural mishap". That might be, for example, the Tribunal preventing a party from arguing an essential part of any case. (See for example the case of *Trimble v Supertravel Ltd [1982] ICR 440*, in an employment law context). Generally, however, it is broadly accepted that the "*interests of justice*" must

properly encompass doing justice to the party who was successful at hearing and, further, the public interest in finality of litigation, as well as justice being properly and fairly afforded to the party seeking a review. The Tribunal will return to these matters in a discussion of the remaining issues below.

9. Returning then to the matter of the late presentation of respondent's evidence, as the Tribunal sees it, the key issue in the case relates to whether or not there occurred a procedural mishap which might have given rise to a properly sustainable argument on the "*interests of justice*" ground. At this hearing, the appellant has confirmed very clearly indeed, upon being closely questioned by the Tribunal regarding this matter, that he has accepted fully the Tribunal's recording of what had transpired in the early stages of the original hearing (as that is recorded in the decision) as being an accurate and complete record of the Tribunal's proceedings. Thus, it is worth while setting out here the Tribunal's record of this in the decision, which reads as follows:-

"At the commencement of the hearing, the appellant indicated that he had not had a sight until shortly before the commencement of the hearing of the respondent's documentation entitled "Presentation of Evidence". The Tribunal expressed some concern at that fact and at the possibility that the appellant might have been placed under a significant disadvantage in that regard. Thus the Tribunal indicated that if the appellant either wished for more time to consider the documentation or, indeed, to apply to adjourn the matter, the Tribunal was quite prepared to accommodate the appellant in that regard. However, after some discussion, the appellant indicated that, in view of the nature of the specific case that he wished to present, he wished the hearing to proceed. He would reserve his position regarding the possibility of applying for an adjournment once he had heard the respondent's case argued. After some further discussion and having explained to the appellant various issues arising from the foregoing, on the basis of the appellant's decision in that regard, the hearing proceeded. After conclusion of the respondent's case, the appellant then indicated that he did not require any further adjournment or indeed any more time to consider his position; he was content for the Tribunal to proceed to make its decision on foot of the evidence and the arguments that had been advanced in the course of the hearing."

10. The appellant did not take issue with any part of the foregoing record of what had transpired at the original hearing. Nonetheless, he contended that the Tribunal ought to have effectively disregarded his own clearly expressed views and wishes and thus proceeded to adjourn the hearing, effectively of the Tribunal's own motion. The Tribunal is unsure as to whether or not it would have been entitled to proceed in this manner, that being effectively to set a course against the appellant's own clearly expressed wishes after the appellant had been afforded a reasonable opportunity by the Tribunal to consider his position and in the face of no objection from the respondent to the possibility of an adjournment under these circumstances.

11. The Tribunal does, further, take note a number of matters. Firstly, the appellant was afforded an entitlement at the stage of making his initial written application to the Tribunal (to initiate his appeal from the respondent's decision) to identify any witness that he wished to bring to the hearing, including any expert witnesses. That is a standard option to be indicated on the application form. The appellant chose not to do so either then or at any time in advance of the hearing. Secondly, the Tribunal notes that the appellant was invited at the hearing by the Tribunal to take whatever time he wished to read the respondent's documentary evidence. Thirdly, the appellant was invited on a number of occasions by the Tribunal, if he wished to do so, to apply to adjourn the proceedings. It was the appellant's own decision, as is clear from the Tribunal's record of the proceedings that is set out above and not challenged by the appellant, to proceed with the matter. An adjournment would have been quite possible and would have been readily granted, as the Tribunal had indicated, under the particular circumstances. In the Tribunal's view, the appellant must accept the consequences of his decision. Thus, the Tribunal has very considerable difficulty in seeing how any type of what might be described as a "procedural mishap" occurred in the conduct of the proceedings sufficient properly to ground a review of the Tribunal's decision, in the "*interests of justice*".

12. As this issue is entirely interconnected with the first and the second stated grounds of potential review, the Tribunal determines that the appellant's

submissions on all three grounds of potential review can be disposed of on the single determination of this point.

13. The Tribunal's unanimous determination is that nothing has transpired in the course of the hearing or since then which could properly give rise to an entitlement on the appellant's part to have the decision reviewed on the ground of the "*interests of justice*", being the third ground put forward (Rule 21 (d) of the Rules). Likewise, the Tribunal's unanimous determination is that there has not been made out by the appellant any case of sufficient weight upon which the Tribunal ought properly to review the decision on the first two grounds put forward (Rule 21 (b) & (c) of the Rules).

THE TRIBUNAL'S CONCLUSIONS AND GENERAL OBSERVATIONS

14. The case does raise concerns on the part of the Tribunal regarding late presentation of evidence. The Tribunal would wish to take this opportunity to highlight a real concern that such Presentation of Evidence ought on all occasions to be presented to any appellant, or to other party entitled to receive such evidence, a reasonable time in advance of any hearing, otherwise the matter might well be adjourned, with consequent cost, difficulty and inconvenience for all concerned. However, whilst the Tribunal does not regard it as being at all satisfactory that the respondent's Presentation of Evidence was not given to the appellant until the morning of the hearing, the appellant's resolution of any difficulty in regard to that issue lay in his own hands. As is clear from the record of proceedings indicated above, the Tribunal tried as best it reasonably could to accommodate the appellant. The Tribunal's determination, looking at all of this, is that there has been nothing that could properly be said to amount to a procedural mishap in the matter nor are any other grounds established to have the decision reviewed by this Tribunal.
15. Accordingly the appellant's application for a review is dismissed by the Tribunal, without further Order.

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

Date decision recorded in register and issued to parties: 9 December 2008