

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

**CASE REFERENCE NUMBER: NIVT 6/12**

**DAVID LEAKE – APPELLANT**  
**AND**  
**COMMISSIONER OF VALUATION FOR NI - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Date of hearing: 31 October 2012**

**Chair: Ms Nessa Agnew**

**Members: Mr Brian Sparkes and Ms Noreen Wright**

**DECISION AND REASONS**

**The Hearing**

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (“the 1977 Order”). By a Notice of Appeal dated 05 May 2012 the Appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland (“the Commissioner”) dated 24 April 2012 in respect of the Valuation of a hereditament situated at 63 Pollysbrae Road, Moyse, Limavady, Co Antrim, BT49 9LN (“the subject property”). The Appellant, Mr Leake was present at the Tribunal. The Respondent was represented by Mr Gordon Bleakley and Mr Stephen Stuart.
2. The Respondent’s Presentation of Evidence describes the subject property as a pre-1919 detached cottage in a rural area accessed by an unadopted laneway-part of which is not owned by the Appellant. It has a Gross External Area (GEA) of 106m<sup>2</sup>. It has undergone modernisation over a period of time. The dwelling is of rubble masonry construction with a pitched tile roof and wet dash render. There is a block cavity extension to the rear which is a conservatory and is listed as ancillary space. There are agricultural outbuildings which are owned by the Appellant. It has a well water supply, mains electricity and a septic tank.
3. The Respondent has assessed the capital value (“CV”) of the property as £100,000. The Commissioner of Valuation’s Decision on Appeal made on 24<sup>th</sup> April 2012 was to retain the valuation at £100,000. The Explanation in the Valuation Certificate stated:

*No change-Negative impact of right of way on part of laneway not applicable under Legislation-Close proximity of farm buildings reflected in current Capital Value.*

4. The issue in this appeal is whether the current capital valuation of £100,000 is correct.
5. The Appellant appeals against that decision under Article 54 of the 1977 Order.

### **The Evidence**

6. The following documents were before the Tribunal;
  - Commissioner's Decision on Appeal dated 24 April 2012;
  - Appellant's Notice of Appeal dated 5 May 2012;
  - Respondent's Presentation of Evidence dated 4 September 2012;
  - Letter from Appellants (undated) responding to the Presentation of Evidence enclosing photographs, copies of a land registry map, an article entitled 'Public and Private Rights of Way Distinguished' and details of a property at 203 Glenhead Road, Limavady (received by Tribunal Unit on 25 September 2012);
  - Respondent's response to Mr Leake's letter dated 8 October 2012.

On the morning of the hearing Mr Leake provided the Tribunal with a letter from Frank Donaghy (Auctioneers) Limited to himself dated 29<sup>th</sup> October 2012.

7. The Tribunal heard evidence and submissions from Mr Leake and from Mr Bleakley and Mr Stuart.
8. The Tribunal reserved its decision. This notice communicates the Tribunal's decision and contains the reasons for the decision in accordance with Rule 19 of the Valuation Tribunal (NI) Rules 2007.

### **The Law**

9. 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, as is customary, does not intend in this decision to fully set out 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 decisions of this Tribunal, which are readily available. All relevant statutory provisions and principles were fully considered by the Tribunal in arriving at its decision in the matter.

10. Article 54(3) of the 1977 Order provides that, on appeal, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.

## **The Tribunal's Findings**

### **Capital Value**

11. Mr Leake submitted in his Notice of Appeal that the Capital Value of the subject property should be between £70,000 and £80,000. He referred to the build quality and lack of maintenance of the property. He also referred to the rising damp problem in the property and the fact that the presence of long cracks in the plasterwork on the old section of the building could be contributing to some of the damp. He further submitted that the plumbing pipework in the concrete floors was not properly insulated or protected and that cement particles have eroded sections of pipes which are now disconnected.
12. Mr Stuart addressed those points in the Presentation of Evidence and in his oral evidence. He submitted that the property is in an average state - both internally and externally - considering the age, type and construction of the property and that from his inspection he did not see any major signs of damp. He did remark on condensation and cold spots on walls. The photographic evidence attached to the Presentation of Evidence and the further photographs submitted by the Appellant with his letter received on 25<sup>th</sup> September do show damp.
13. The Appellant sets out the lengthy history of the works to this property in that letter. Mr Leake submitted that much of the work to this property was carried out by his late father-in-law who was not a builder by trade and that, consequently, the build quality and finish are not comparable with any other surrounding properties. The Tribunal examined the photographs and noted the points made by the Appellant regarding damp. The Appellant also brought with him to the hearing bags of clothes which he had taken from the subject property. These clothes were shown to the Panel and were affected by mould.
14. In relation to the matters set out above the Tribunal has to take into account the statutory assumption that the property is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality. On that basis, although the Panel recognized that the property is affected by damp and has seen photographs showing same, the statutory presumption means that it cannot take this into consideration when assessing the Capital Value.
15. Mr Leake made a submission in the Notice of Appeal and expanded on it in the September letter that the access from the subject property to the Pollysbrae Road is not a legal access way. He submitted that adjoining landowners own the final third of the lane closest to the Pollysbrae Road and that Mr Leake has no right of way over that final one third of the laneway. Mr Leake showed the Panel photographs of what he submitted was the legal access which is to the rear of the property. One photograph showed

flooding of the laneway and Mr Leake explained that as the laneway is a shared one, he has a right of way over, but no right to improve, approximately two thirds of the laneway which is owned by his neighbours.

16. The Tribunal did recognize that the laneway from the Glenhead Road was in poor condition. Mr Stuart submitted that even if Mr Leake has no right of way over the Pollysbrae Road access that this does not affect the CV as there is a statutory assumption that the hereditament is sold free from any rent charge or other encumbrance and that there is an alternative access which is the access way shown in the photographs. Although Mr Leake has provided information regarding the location of the accesses to the subject property, the information he has provided is not sufficient to demonstrate to the Tribunal the exact legal status of both laneways as title deeds were not available for the Tribunal, nor was there correspondence from Mr Leake's solicitor. The Tribunal is of the view that no reduction can therefore be made to the Capital Value in respect of the access ways.
17. Mr Leake also submitted that many of the renovations carried out by his late father-in-law were not passed by Building Control but this was countered by Mr Stuart who highlighted in his Presentation of Evidence that a further statutory assumption contained in Schedule 12 paragraph 15 is that, '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'. The Tribunal must accept Mr Stuart's submission as representing the legal position and the fact that even if renovations do not have the benefit of Building Control this cannot affect the CV.
18. Mr Leake submitted that the extension to the property is off square and that some timbers in the roof space were affected by woodworm and dry rot. Mr Stuart was of the view that his visual inspection, whilst not a structural survey, did not reveal woodworm or dry rot. The Tribunal noted Mr Leake's submissions that he has, in relation to all the difficulties he has experienced with this property, made great efforts to research the causes and has attempted to eradicate the source of the problems.
19. In his September letter Mr Leake also drew the Tribunal's attention to the external state of the subject property and the fact that the property has no finished paths and that the service/manhole covers are all exposed. Mr Donaghy, in his letter to Mr Leake, also refers to the external condition of the property and submits that it is not in average external condition. He refers to cracks to the render. The Tribunal is of the view that, in taking all the evidence into account, the external condition of the subject property merits a reduction in the Capital Value.
20. The Respondent put forward evidence of four properties in the area which are submitted as being comparables. Apart from the fact that all four comparables are Pre 1919 detached bungalows or cottages and the GEA of the main houses are comparable in size to the subject property there is no further information except for photographs of three of the four properties. It is also not possible to tell how close the four properties are to the subject property as the map showing the location of all four properties and the

subject property has not been scaled. From that map, all four properties, unlike the subject property appear to be adjacent to a road, as opposed to being accessed by a laneway. Property No 5, purely from the photograph provided, would appear to be in a better external state and have a more modern appearance.

21. We have had regard to the capital values in the valuation list for the comparable properties submitted by the Respondent. The Panel is of the view that the information provided in respect of those four properties is not sufficient for the Tribunal to establish whether they are in fact in the same state and circumstances as the subject property and in applying Schedule 12 paragraph 7(2) of the 1977 Order, the Tribunal is of the view that the subject property is out of tone with the properties submitted by the Respondent. Mr Donaghy makes a similar submission in his letter, although for different reasons.
22. Mr Stuart has, on the basis that the subject property was in tone with the comparables, assessed the Capital Value at £110,000 before allowing a £10,000 reduction for proximity to a number of farm buildings. Mr Donaghy has suggested that the starting point be £107,500. The Tribunal agrees that the £10,000 reduction for proximity to farm buildings already allowed by Mr Stuart is appropriate and should be retained.
23. The Panel must apply the statutory presumptions set out in Schedule 12 of the 1977 Order. These include the presumption set out at paragraph 7(2) of Schedule 12 that the subject property is in an average state of internal repair and fit out having regard to the age and character of the property and its locality. The capital value of the subject property is the amount it might reasonably have been expected to have realised if it had been sold on the open market by a willing seller on 1 January 2005 assuming it was in an average state of internal repair and fit out.
24. As the property must be assumed to be in an average state of internal repair and fit out the panel cannot take account of the internal damp problem and the many other internal repair issues identified by the Appellant.

## **Decision**

25. The Tribunal must take account of the statutory presumption contained in Article 54(3) of the 1977 Order. It states "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 the presumption or perhaps for the Commissioner's decision on appeal to be seen to be so manifestly incorrect that the tribunal must take steps to rectify the situation.
26. The Appellant has discharged the burden upon him to show that the valuation assessed for the subject property is not correct in accordance with paragraph 7 of Schedule 12 of the 1977 Order. The Tribunal is of the view that the subject property is out of tone with the properties that the Respondent has adduced in its Presentation of Evidence.

27. In all of the circumstances and in light of the findings above the Tribunal is of the view that a reasonable reflection of the differences between the subject property and the comparables would be a reduction of £7,000 to reflect the external state and the fact that the subject property is not in tone.
28. The unanimous decision of the Tribunal is that the appeal is allowed to the extent that the Capital Value is decreased to £93,000 and the Commissioner of Valuation shall amend the Valuation List to reflect this decision.

**Ms Nessa Agnew, Chair  
Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties:**      *12 March 2013*