

**NORTHERN IRELAND VALUATION TRIBUNAL  
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE  
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007  
CASE REFERENCE NUMBER: NIVT 50/14**

**MARK JOHNSTON - APPELLANT  
AND  
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr. Alan Reid LL.B  
Members: Tim Hopkins FRICS and Garry McKenna**

**Belfast, 20<sup>th</sup> May 2016**

## **DECISION**

The unanimous decision of the Tribunal is that the Capital Value of the property at 24 Windermere Drive, Ballymagee, Bangor, Co Down BT20 4QF as determined in a Certificate of Alteration dated 18<sup>th</sup> December 2014 is confirmed and the Appellant's Appeal is dismissed.

### **REASONS**

#### **1. Introduction**

- 1.1 This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order").
- 1.2 By a Notice of Appeal received by the Tribunal on 16<sup>th</sup> January 2015 the Appellant appealed to the Northern Ireland Valuation Tribunal against the Certificate of Alteration issued by the Commissioner of Valuation for Northern Ireland ("the Commissioner") dated 18<sup>th</sup> December 2014 in respect of the Valuation of a hereditament situated at 24 Windermere Drive, Ballymagee, Bangor, Co Down BT20 4QF ("the Subject Property")
- 1.3 The Appellant, Mr. Johnston, appeared and represented himself. Mr. Jonathan Maybin accompanied by Mr. Gary Humphreys appeared for and represented the Commissioner as Respondent.

#### **2. 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"). It is perhaps desirable to set out some detail in respect of the statutory provisions

applicable to the basis for valuation and the mechanism for appeals to this tribunal in this type of case. Material to the case, 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 1<sup>st</sup> 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 subparagraph of Article 39(1A) will always fall within that subparagraph.

(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";

### **3. The Evidence**

3.1 The Tribunal had before it the Appellant's Notice of Appeal received by the Tribunal on 16<sup>th</sup> January 2015 and copies of various documents including:-

- Valuation Certificate issued on 18<sup>th</sup> December 2014
- A document entitled "Presentation of Evidence" submitted on behalf of the Commissioner by Mr. Jonathan Maybin MRICS of Land and Property Services and received by the Tribunal on 18<sup>th</sup> March 2016.
- Emails dated 13<sup>th</sup> January 2015 between the Appellant and Templeton Robinson together with a copy of a brochure prepared by Templeton Robinson in respect of the Subject Property.
- Emailed correspondence between the Appellant and the Tribunal in the period 2<sup>nd</sup> December 2015 to 7<sup>th</sup> January 2016.
- Document dated 10<sup>th</sup> March 2016 and entitled "response to additional information" submitted by Mr Maybin on behalf of the Commissioner.
- Correspondence between the Tribunal and the Parties.

3.2 At the commencement of the hearing of the Appeal both parties confirmed that all of these documents had been provided to each of them and that they had had an opportunity to consider them prior to the hearing.

### **4. The Facts**

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

- 4.1 The hereditament is a detached bungalow situated at 24 Windermere Drive, Bangor, Co Down BT20 4QF ("the Subject Property"). The Subject Property was stated to be owned by the Appellant who was the rate payer.
- 4.2 The Subject Property is of brick construction with a pitched tiled roof. It has a converted roof space with habitable rooms and has a domestic out-building or store above an integral garage. It has a gross external area ("GEA") of 200 m<sup>2</sup> together with a glass conservatory comprising 16 m<sup>2</sup>, the said integral garage of 31 m<sup>2</sup> and the previously mentioned out-building/store of 14 m<sup>2</sup>. The property has oil fired central heating and is connected to mains sewer and electricity.
- 4.3 The Capital Value Assessment of the Subject Property is £245,000.00 at the Antecedent Valuation Date ("AVD") that date being 1<sup>st</sup> January 2005. The Capital Value Assessment had previously been £275,00.00 but following an application for revision by the Appellant had been reduced by the Commissioner to £245,000.00. In arriving at the Capital Value Assessment figure of £245,000.00 regard was had to assessments of properties in the Valuation List considered by the Respondent to be comparable. These comparables were set out in a Schedule to the "Presentation of Evidence" submitted on behalf of the Commissioner. There were a total of three comparables. Further particulars of these comparables, including photographs, were provided.
- 4.4 The Subject Property had been purchased by the Appellant in August 2005 for £230,000.00 having initially been marketed in January 2005 with an asking price of £240,000.00.
- 4.5 The parties helpfully agreed that the comparable properties put forward in the Commissioner's presentation of evidence were all comparable hereditaments in the same state and circumstances as the Subject Property. The Appellant did not seek to challenge their Capital Values, save as referred to in paragraph 5.2 below.
- 4.6 The parties also helpfully agreed that the central issue for consideration by the Tribunal was whether in considering the Appellant's Appeal the Tribunal was entitled to take into account the actual sale price of the property in August 2005 and, if so, what weight should be given to that evidence in determining the Capital Value of the Subject Property.

## **5. The Appellant's Submission**

The Appellant, in summary, made the following submissions:-

- 5.1 The Appellant conceded that based upon the definition in the legislation, Capital Value was not the same as Current Market Value. He asserted that effectively the Commissioner's Valuers were making "guesstimates" as to the values of properties prior to 2007. He submitted that he had a clearer idea of the Open Market Value of the property in 2005 because the property had been marketed for sale on 8<sup>th</sup> January 2005 with an asking price of £240,000.00. Initially his evidence to the Tribunal had been that he had offered the sum of £230,000.00 for the Subject Property a short

time after it was placed on the market for sale and that the sale then completed in August 2005. Subsequently however Mr Johnston clarified this further and informed the Tribunal that after his offer of £230,000.00 had been accepted in February 2015 the property had then been withdrawn from sale by the Vendors before coming back on the market in June 2015 when he confirmed his offer of £230,000.00 which was subsequently accepted with the sale being completed in August 2005 at that price.

- 5.2 The Appellant's submission was that this evidence of the actual sale of the property in 2005 was a compelling indication that the Capital Value of the property as at 1<sup>st</sup> January 2005 should be £230,000.00. He further suggested that accordingly, it may well be the case that the other comparable properties put forward by the Commissioner may have been over-valued
- 5.3 The Appellant contended that the task of the Tribunal was to assess the Capital Value of the Subject Property as at 1<sup>st</sup> January 2005 and that only if there was no other evidence of that value should the Tribunal consider the comparable properties and the tone of the Valuation List.
- 5.4 The Appellant also informed the Tribunal that he had not earlier sought a review of the Capital Value of the Subject Property as he had only become aware in 2014 that it was possible to check the values of properties online.

## **6.The Respondent's Submissions**

In summary, the following submissions were made on behalf of the Commissioner -

- 6.1 In his presentation of evidence document Mr Maybin made reference to the requirement in the legislation that regard should be had to the assessment of other comparable properties already in the Valuation List. He asserted that the correct method of valuation was therefore by comparison with other assessments and that using Market Values was not the correct method of assessment. He referred the Tribunal to the case of *Dawkins (VO) v Ashe Brothers and Heaton Limited* (1969) 2 AC 226 and in particular to the following comment of Lord Pearce therein, "*rating seeks a high standard by which every hereditament in this country can be measured in relation to every other hereditament. It is not seeking to establish the true value of any particular hereditament but rather its value in comparison with the respective value of the rest*".
- 6.2 Mr Maybin in his presentation of evidence further asserted that a rating valuation was a statutory valuation and that Capital Value could not be considered to be the same as Market Value for various reasons. He referred particularly to the statutory assumptions set out in paragraphs 9 – 15 of Schedule 12 referred to above.
- 6.3 The Respondent contended that the comparable hereditaments referred to in the Respondent's presentation of evidence supported a confirmation of the Capital Value of the Subject Property as at £245,000.00. Mr Maybin

- contended that only those comparables should be taken into account in determining the Capital Value of the Subject Property.
- 6.4.1 The property at 32 Windermere Drive was also a detached bungalow with a converted first floor. It had a GEA only slightly smaller than the Subject Property and a garage which was slightly larger. It had no conservatory or other out-building. Its Capital Value was £235,000.00 which was £10,000.00 less than the Subject Property.
- 6.4.2 40 Windermere Drive was also a detached bungalow with a first floor. Its GEA was slightly smaller again than the Subject Property and again with a garage which was slightly larger. Its Capital Value was £235,000.00.
- 6.4.3 42 Windermere Drive was a similar detached bungalow with a first floor. It had a GEA of 187 m<sup>2</sup>, a conservatory at 17 m<sup>2</sup> and a broadly similar size garage and outbuildings to the Subject Property. Its Capital Value was £245,000.00.
- 6.5 Mr Maybin was questioned closely by the Tribunal with regard to his assertion that the only basis for determining the Capital Value of the Subject Property was by reference to the comparable hereditaments put forward. He initially sought to maintain that position stating that now, ten years after the publication of the Valuation List, it was "too late to challenge the tone of the list". Mr Humphreys asserted that the tone of the list was now settled and referred to the statutory presumption in Article 54 (3) in the 1977 Order (as amended) to the effect that "any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown"
- 6.6 Mr Humphreys further submitted that in carrying out the extensive revaluation exercise which led to the publication of the present Valuation List extensive Market Value evidence of many properties was gathered and taken into account in settling the individual comparative Capital Values of all of the properties in the list. While not saying that the evidence of this particular sale was irrelevant, in his view very little weight should be placed upon it as it was evidence of only one particular sale. He emphasised that the process of valuation was based upon fairness and equality. He commented that the time to take into account the specific sale of the Subject Property would have been at the informal review stage when the Valuation List was being prepared in 2007.

## **7. The Tribunal's Decision**

- 7.1 The Tribunal is grateful to the parties for their submissions and commends them for their courteous and co-operative approach to the preparation and presentation of those submissions to the Tribunal.
- 7.2 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 the AVD at a figure of £245,000.00. 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.

- 7.3 The Tribunal must begin its task by taking account of an important statutory presumption contained within the 1977 Order articles 54(3) of the 1977 Order 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 on appeal to be seen to be so manifestly incorrect that the Tribunal must take steps to rectify the situation.
- 7.4 The Tribunal is satisfied on the evidence that the initial assessment as to Capital Value has been carried out in accordance with the prescribed manner as set out Schedule 12 of the 1977 Order. The evidence submitted as to comparables and the submissions on behalf of the Commissioner lead the Tribunal to conclude that the correct statutory approach has been followed.
- 7.5 The Tribunal then turns to consider whether there is sufficient evidence in the arguments made by the Appellant to displace the statutory presumption.
- 7.6 The Appellant contended that his evidence of a Market Value sale of the property in 2005 at a price of £230,000.00 should carry more weight than the evidence of the values of the comparable hereditaments put forward by the Commissioner. The Tribunal carefully considered the Appellant’s submissions and those put forward on behalf of the Respondent, particularly by Mr Humphreys as referred to in paragraph 6.6 above. Having done so and having regard to the relevant statutory provisions as referred to the Tribunal on balance preferred the evidence of the Respondent that the evidence of the 2005 sale should be given comparatively little weight.
- 7.7 Having carefully considered all of the evidence and the respective submissions of the parties, the Tribunal, on the balance of probabilities was not satisfied that the Appellant’s evidence was sufficient to displace the statutory presumption contained in article 54 (3) of the 1977 Order as amended.
- 7.8 Having carefully considered all of the evidence, the Capital Values of the Subject Property and the comparable hereditaments and the evidence of the sale of the Subject Property in 2005 and having carefully considered the weight to be given to all of the evidence and the submissions of the parties, the Tribunal is of the view that the appropriate Capital Value Assessment of the Subject Property at the AVD of 1<sup>st</sup> January 2005 is £245,000.00 as it presently appears in the Valuation List.
- 7.13 Accordingly, the unanimous Decision of the Tribunal is that the appeal against the Certificate of Valuation of the Commissioner of Valuation for Northern Ireland dated 18<sup>th</sup> December 2014 is dismissed.

**Mr Alan Reid, Chairman  
Northern Ireland Valuation Tribunal**



**Date decision recorded in register and issued to parties:** 2nd August 2016