

**NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007
CASE REFERENCE NUMBER: NIVT3/13**

**JOHN McAREAVEY and COLLEEN McAREAVEY - APPELLANTS
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

Northern Ireland Valuation Tribunal

**Chairman: Alan Reid, LL.B.
Member : Mr Chris Kenton BSc (Est.Man.) FRICS**

Belfast , 20th March 2014

DECISION

The unanimous decision of the Tribunal is that the Notice of Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 21st March 2013 is allowed and the Capital Value of the Property at 42b Ballymacbredan Road, Magheralin, County Armagh BT67 0QU be assessed at £360,000.00 and the Tribunal directs that the Valuation List be amended accordingly.

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 dated 16th April 2013 the Appellants appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland (“the Commissioner”) dated 21st March 2013 in respect of the Valuation of a hereditament situated at 42b Ballymacbredan Road, Magheralin County Armagh BT67 0QU.
- 1.3 The Second-named Appellant Mrs McAreavey appeared accompanied by her Solicitor, Mr Neil Mulholland LLB. Mr Gordon Bingham accompanied by Mr Michael McGrady appeared for and represented the Commissioner as Respondent.
- 1.4 At the commencement of the hearing both parties confirmed their consent to the Appeal being considered and determined in the absence of an

ordinary member of the Tribunal pursuant to Rule 4 (3) of the Valuation Tribunal Rules (Northern Ireland) 2007.

2. The Law

The relevant statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). The statutory provisions regarding the basis for valuation are contained in Article 8 of the 2006 Order which amended Article 39 of the 1977 Order and have been fully set out in numerous previous decisions of this Tribunal. The Tribunal does not therefore intend in this decision to fully set out the statutory provisions of Article 8.

3. The Evidence

The Tribunal had before it the following documents :-

- 3.1.1 The Commissioner’s Decision on Appeal dated 21st March 2013.
- 3.1.2 The Appellants’ Notice of Appeal dated 16th April 2013.
- 3.1.3 A document entitled “Presentation of Evidence” submitted on behalf of the Commissioner by Mr Gordon Bingham of Land and Property Services.
- 3.1.4 A letter dated 3rd September 2013 with enclosures as referred to therein submitted by the Second-named Appellant Mrs McAreavey.
- 3.1.5 A further A4 summary sheet submitted by the Appellant Mrs McAreavey at the commencement of the hearing.

At the commencement of the hearing of the Appeal all 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 two storey dwelling house situated at 42b Ballymacbredan Road, Magheralin County Armagh BT67 0QU (“the Subject Property”). The Subject Property was stated to be owned by the Appellants who the Tribunal understood to be the rate payers.
- 4.2.1 The Subject Property is a two storey detached dwelling the construction of which was completed in 2012. It is of traditional block/brick construction with a tiled roof and UPVC double-glazed windows and has full oil-fired central heating. It is located in a rural location near to the village of Magheralin. The Subject Property has a garage with a Gross External Area (“GEA”) of 53 m² and with storage above it comprising 29 m².

- 4.2.2 The GEA of the Subject Property had initially been recorded by the District Valuer as 361 m² but on that occasion the first floor measurements had been estimated. The Property had been subsequently resurveyed by Mr Bingham and a revised GEA was then recorded in the Valuation List as 382 m². The Appellants had queried the methodology employed by Mr Bingham in carrying out the measurements. Mr Mulholland on behalf of the Appellants informed the Tribunal that the Appellants were prepared to accept that the correct GEA for the dwelling house was 378 m². The Commissioner's representatives confirmed that they also accepted the correct measurement to be 378 m².
- 4.3 The Capital Value Assessment of the Subject Property is £370,000.00 at the Antecedent Valuation Date ("AVD") that date being 1st January 2005. In arriving at that Capital Value Assessment figure regard was had to assessments in the Valuation List of properties considered comparable in the general locality. A number of comparables were set out in a Schedule to the "Presentation of Evidence" submitted on behalf of the Commissioner. Further particulars of the comparables were provided together with, in each case, photographs.
- 4.4 The Capital Value Assessments of all of the comparable properties were unchallenged.

5. The Appellants' Submission

The Appellants, in summary, made the following submissions in relation to the Capital Valuation of the Subject Property:-

- 5.1 The Capital Valuation of the Subject Property as recorded in the Valuation List was inaccurate and inflated by comparison with other properties in the locality and if sold on the open market either in 2005 or presently would not realise a sale price as high as the Capital Valuation at £370,000.00.
- 5.2 The Valuation of a property should take account not only of the GEA of the dwelling house and garage and ancillary buildings but should also take account of the size of the site upon which the property was located and the extent to which fencing and driveways of the site have been completed.
- 5.3 Commenting upon the comparables put forward on behalf of the Respondent Mrs McAreavey, Mr Mulholland did not challenge the Capital Values of any of the comparables but sought to distinguish them from the Subject Property focusing in particular on properties at 37C and 42 Ballymabredan Road, Magheralin.
- 5.3.1 The first comparable at 37c Ballymacbredan Road, Magheralin was a detached dwelling house with a GEA of 323 m² and a garage of 46 m². It had been constructed in 2006 and had a Capital Value of £310,000.00.
- 5.3.2 The second comparable at 42 Ballymacbredan Road, Magheralin was a detached house and garage also built in approximately 2006. The dwelling house had a GEA of 311 m² and the garage a GEA of 50 m².

- The Capital Value for that property in the Valuation List was £300,000.00. The Appellants contended that these comparables could be distinguished from the Subject Property because the plot sizes upon which they were constructed were significantly larger than the plot size of the Subject Property. Further, the Appellant contended that the Capital Valuation of the Property at 37c Ballymacbredan Road was incorrect and should not be used as a comparable.
- 5.3.3 Mrs McAreavey and Mr Mulholland contended that properties at 83 Cottage Road, Lurgan and 29 Belfast Road, Lurgan were more appropriate comparables. The property at 83 Cottage Road comprised a dwelling house with a GEA of 350 m² and a garage of 84 m². Its construction had been completed in 2012 or 2013 and it had a Capital Valuation of £300,000.00. It was 1.8 miles from the Subject Property. The property at 29 Belfast Road was of similar size to the Subject Property having a GEA of 389 m², a garage of 35 m² and other ancillary accommodation comprising 172 m². It was 1.5 miles from the Subject Property and had a Capital Valuation of £320,000.00. It had been constructed in approximately 1910.
- 5.4 The Appellants' contended that the difference in Capital Valuation of the Subject Property at £370,000.00 from the Capital Valuations of the properties at 29 Belfast Road and 83 Cottage Road in particular suggested that the Capital Valuation of the Subject Property was excessive particularly having regard to the respective GEA's of each of the properties.
- 5.5 Mr Mulholland for the Appellants in concluding the Appellants' submissions contended that a "fair compromise" with regard to the Capital Valuation of the Subject Property would be somewhere between £320,000.00 and £370,000.00.

6. The Respondent's Submissions

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

- 6.1 Mr Bingham contended that the most useful comparables to have regard to were those which were closest in location to the Subject Property, namely the properties at 37c and 42 Ballymacbredan Road. He contended that as they were close in location to the Subject Property and were of modern relatively recently constructed properties they constituted good comparables. He contended that although their GEA's were smaller than the Subject Property the difference in Capital Valuation of the Subject Property at £370,000.00 with those of the comparables at 37c Ballymacbredan Road and 42 Ballymacbredan Road of £310,000.00 and £300,000.00 respectively was a far reflection of the differences in characteristics between the Subject Property and those comparables.

- 6.2 Mr Bingham further sought to rely upon properties at 46 Damhill Road which had been constructed in approximately 2006 with a GEA of 440 m² and a Capital Valuation (before Agricultural Allowance) of £412,500.00 and 77 Kilmore Road which had been constructed in approximately 2007 with a GEA of 409 m² and the garage of 88 m² at a Capital Value of £400,000.00 as further evidence in support of the Capital Valuation of the Subject Property at £370,000.00.
- 6.3 Mr Bingham further suggested that in the general locality of the Subject Property and the various comparables referred to, another factor affecting Capital Valuation was their proximity to the town of Lurgan. He contended that property valuations tended to increase the further the property in question was from Lurgan.
- 6.4 Commenting upon the comparables favoured by the Appellant at 83 Cottage Road and 29 Belfast Road Mr Bingham contended that No 83 Cottage Road was not as good a comparable as the properties on Ballymacbredan Road as it was not as close to the Subject Property and that the property at 29 Belfast Road was a much older property without the benefit of modern insulation, glazing etc which would therefore have increased maintenance and running costs.
- 6.5 In summary Mr Bingham contended that having regard to the characteristics of the various comparables and in particular their respective size, age and location, the comparables put forward supported a Capital Valuation of the Subject Property at £370,000.00.

7. The Tribunal's Decision

- 7.1 The Tribunal thanks the parties for their helpful submissions and their courteous appearances before 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 £370,000.00. On behalf of the Commissioner it has been contended that that figure is fair and reasonable when compared to other properties. The statutory basis for valuation has been referred to and, in particular, 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. Article 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”*. The onus is therefore upon 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 In this case 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 on anything other than the prescribed manner provided for in Schedule 12, paragraphs 7 (and following) of the 1977 Order. The statutory mechanism has been expressly referred to in the Commissioner's submissions to the Tribunal and the Tribunal noted the evidence submitted as to comparables. The Tribunal accordingly concludes that the correct statutory approach has been followed in this case in assessing the Capital Value.
- 7.6 The Tribunal must then consider whether the evidence placed before it or the arguments made by the Appellant are sufficient to displace the statutory presumption. Those arguments have been summarised above.
- 7.7 The Tribunal's task is not to strike a "compromise" between the Capital Valuations of the Subject Property contended for by the Appellants and the Commissioner. Rather its task is to weigh the evidence submitted by the parties and consider the written and oral submissions of the parties in accordance with the statutory provisions contained in the 1977 Order (as amended) and having done so to establish on the balance of probabilities the correct Capital Valuation for the Subject Property.
- 7.8 The Appellant did not seek to challenge the Capital Value Assessments of any of the comparables placed in evidence by the Respondent but sought to distinguish their individual characteristics particularly with regard to their size, age and location and contended that those distinguishing characteristics demonstrated that the Capital Valuation of the Subject Property was excessive and should be reduced.
- 7.9 The Commissioner's Representatives simply contended that all of the comparables relied upon by the Commissioner (after due allowance was made for their individual characteristics of age, location and size) supported a Capital Valuation of the Subject Property at £370,000.00. They particularly relied upon the comparables at 37c and 42 Ballymacbredan Road in this regard.
- 7.10 The Appellants felt that there were better comparables than 37c and 42 Ballymacbredan Road. In particular they sought to rely upon the comparables at 83 Cottage Road and 29 Belfast Road even though they were further away from the Subject Property than the comparables at Ballymacbredan Road. The Appellants felt that the additional distance to those comparables was not a significant factor and denied that their closer proximity to Lurgan had any effect with regard to their lower Capital Values.
- 7.11 On the balance of probabilities, the Tribunal was not persuaded that there was any significant reduction in value of any of the comparable properties specifically attributable to their degree of proximity to Lurgan.
- 7.12 Having carefully considered the particulars and unchallenged Capital Values of all of the comparable properties put in evidence and in particular those in respect of which the parties made detailed oral submissions the

- Tribunal concluded on the balance of probabilities that, although useful guidance could be obtained from all of the comparable properties referred to, the two most useful comparables to consider are those most closely located to the Subject Property namely those at 37c and 42 Ballymacbredan Road Magheralin. On the balance of probabilities the Tribunal was satisfied that the appropriate Capital Value Assessment of the Subject Property at the AVD of 1st January 2005 was £370,000.00 based upon a GEA of the Subject Property of 382 m².
- 7.13 However, in view of the actual confirmed GEA of the property being 378 m² as accepted by both parties, the Tribunal was further satisfied on the balance of probabilities that the appropriate Capital Value Assessment of the Subject Property with the adjusted GEA of 378 m² should be £360,000.00.
- 7.14 Accordingly, the unanimous decision of the Tribunal is that the Appeal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 21st March 2013 is allowed and that the Capital Value of the property at 42 Ballymacbredan Road, Magheralin, County Armagh BT67 0QU be assessed at £360,000.00 and the Tribunal directs that the Valuation List be altered accordingly.

Mr Alan Reid, Chairman
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: