

**NORTHERN IRELAND VALUATION TRIBUNAL  
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND  
THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007  
CASE REFERENCE NUMBER: NIVT 10/17**

**CIARAN AND GILLIAN MCCARNEY – APPELLANTS  
AND  
COMMISSIONER OF VALUATION FOR NI – RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Date of hearing: 18<sup>th</sup> April 2018**

**CHAIRMAN: Stephen Wright**

**MEMBERS: Mr Eric Spence MRICS and Mr Peter Somerville**

**DECISION**

The Tribunal's unanimous decision is that the Appellant's appeal is not allowed and the Capital Valuation assessed, 3 Hillside Gardens, Malone Lower, Belfast BT9 5EP of £255,000 is upheld.

**Introduction**

1. The Appellants did not attend the Hearing. The Respondent did not attend the Hearing.
2. The appeal was heard by virtue of Rule 11(1) of the Valuation Tribunal Rules (Northern Ireland) 2007 which states "*an appeal may be disposed of on the basis of written representations of all parties have given their consent in writing.*"
3. The valuation of the property that is the subject of this appeal, namely 3 Hillside Gardens, Malone Lower, Belfast BT9 5EP (the subject property) was built in 1955 and is a semi-detached house of cavity block construction, brick

outer face with pitched tile roof. The subject property is located in Hillside Gardens, in a suburban location, off the Stranmillis Road in Belfast.

4. The Appellants, by notice of appeal was received on 17<sup>th</sup> August 2017, appealed against the decision of the Commissioner of Valuation issued on 10<sup>th</sup> July 2017 which states that the valuation should be £255,000, stating that the subject property valuation, as assessed, is considered fair and reasonable in comparison to similar properties.
5. The President of the Northern Ireland Valuation Tribunal granted an extension of time to the Appellants (with no objection from the Respondent) to appeal pursuant to Rule 9 (2) and Rule 20 of the Valuation Tribunal Rules (Northern Ireland) 2007, as amended, on the ground that that the Appellants had good reason as to why they did not deliver to the Secretary of the NIVT a Notice of Appeal within the applicable time under these provisions.
6. The following documents have been considered by us:-
  - a. The Notice of Appeal against the valuation for rating purposes (Form 3) was received on the 17<sup>th</sup> August 2017,
  - b. Valuation Certificate issued on 10<sup>th</sup> July 2017;
  - c. Presentation of Evidence by the Commissioner of Valuation dated 29<sup>th</sup> November 2017 by Ms Seline McElhatton MRICS including schedule of comparisons, photographs of the subject property (Appendix 1), map showing the location of the subject property in relation to comparable properties (Appendix 2) and the response of the Respondents to the Appellants' email dated 4<sup>th</sup> August 2017 and
  - d. Order of the NIVT extending the time for Appeal dated 7<sup>th</sup> September 2017.

### **The Law**

7. The statutory provisions are set out in the Rates (Northern Ireland) Order 1977 ("the 1977 Order") as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (the 2006 Order"). Article 54 of the 1977 Order enables a person to appeal to this Tribunal against the decision of the Commissioner on appeal regarding the capital value.
8. Schedule 12 of the 1977 Order as amended states as follows:

*"7(1) subject to the provisions of this schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in Paragraphs 9-15, the hereditament might reasonably*

*expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date.*

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

*(4) in sub-paragraph (1) “relevant to capital valuation date” means 1st January 2005 or such date as the Department may substitute by order made subject to a negative resolution for the purposes of a new capital valuation list.”*

(7) Article 54(3) of the 1977 Order provides that, on appeal, any valuation shown in a valuation list shall be deemed to be correct until the contrary is shown. Thus, any appellant must successfully challenge and displace the presumption of correctness otherwise the appeal will not be successful.

#### **9. Background to the Appeal**

- Ms McElhatton for the Commissioner of Valuation in her Presentation of Evidence sets out the history of the subject property.
- On 25th of January 2017 the subject property was registered with a survey by Belfast City Council. The District Valuer valued the single story rear extension and roof space conversion. An increase in capital value was made from £215,000 to £245,000. The effective date was 1<sup>st</sup> April 2018.
- On 13<sup>th</sup> June 2017 Mrs McCarney lodged an appeal against the District Valuer’s decision. On behalf of the Commissioner of Valuation Ms McElhatton inspected the property on 7<sup>th</sup> July 2017. The appeal was closed on the 10<sup>th</sup> July 2017. The Capital value was increased to £255,000 to maintain the tone.

#### **10. Appellants representations**

The following are the main grounds of Appeal:

- The Appellants, Mr and Mrs McCarney, disagree with the capital value of £255,000 on the grounds that the subject property is not valued consistently with the neighbouring property (1 Hillside Gardens) both have ground floor extensions and roof space conversions.
- 1 Hillside Gardens has a capital value of £290,000, floor area of 189m<sup>2</sup> equating to £1,534 per square metre.

- The subject property has a Capital Value of £255,000, floor area 151m<sup>2</sup> equating to £1,689 per square metre.
- The Appellants believe that the higher valuation on the subject property is discrimination and they do not consider that the “tone” of valuation is relevant when there is monetary value attached.
- The Appellants consider that the purpose of the Land Property Services (LPS) to “*accurately value land and buildings*” and to “*to deliver fair and equitable treatment*” are not being met.

11. In their email of 4<sup>th</sup> August 2017 the Appellants further elaborate on these points, namely:

- Mrs McCarney states that on speaking with Ms McElhatton it became apparent that the rateable value is made based on comparisons with other similar properties and also the “tone” of other valuations.
- Ms McCarney states that she lives in a semi-detached house and her neighbour’s house is 1 Hillside Gardens BT9 5EP. Both properties are of a very similar nature and both have no garage. Both have been extended on the ground floor and had been extended into the roof space. The only difference is the size of the house.
- Mrs McCarney states that as her property is directly attached to the property she would expect her rates to be in line with this property.
- 1 Hillside Gardens valuation is £290,000 for 189m<sup>2</sup> this equates to £1,534 per metre squared.
- Mrs McCarneys valuation is £255,000 for 151m<sup>2</sup>. This equates to £1,689 metres squared. Given the valuation of 1 Hillside Gardens she would expect to be paying the same rate and therefore the valuation of the subject should be correctly adjusted to reflect this. Mrs McCarney further states that she is appealing the decision to value the house at £255,000 as she cannot understand how she is expected to pay a higher rate per metre squared whilst the adjoining property, pays a lower rate per metre squared. She asserts that this is blatant discrimination.
- Mrs McCarney further states that she understands that there are other properties in the area of similar nature - but given that these two properties are attached and both extended in similar manners this is the one which is most relevant.

- The Appellants further state they do not accept ‘tone ‘of valuation should play a part-especially when there is monetary value attached.
- Mrs McCarney further states that the purpose of the Land and Property Services (LPS) is to accurately value land and buildings. Given the above valuations she would argue that the LPS’s stated purpose is not being adhered to. LPS values are to deliver fair and equitable treatment for all and she asserts that charging one customer a higher charge per metre squared than it’s adjoining neighbour is not providing fair and equitable treatment.

## **12. Representations of the Respondents**

Ms McElhattton for the Commissioner for Valuation made the following representations in her Presentation of Evidence:

- The subject property was privately built in 1955 and is a semi-detached house. It has 2.5 stories. The Gross External Area (GEA) is 151m<sup>2</sup>, it has double glazed windows and PVC frames. A central heating system is in place and the property comprises of one reception, kitchen-dining area, three bedrooms, bathroom and two half bath’s.
- The ground of appeal is that the capital value for the subject property is not consistently valued with the neighbouring property. The property the Appellants have cited is the adjoining property 1 Hillside Gardens which they state supports this view.
- Number 1 Hillside Gardens extends to 189 square metres and has a capital value of £290,000. To compare this directly to the subject property, the Appellants have analysed on a rate per square metre basis. This comparable equates to £1,534 per square metre as opposed to £1,689 per square metre on the subject property. Ms McElhatton states this is not the appropriate basis of valuation, but rather by reference to capital value assessments of comparable properties.
- The rear extension of this comparable property - 1 Hillside Gardens has the character of a conservatory rather than an extension. Ms McElhatton refers to the photograph of the rear elevation view at 1 Hillside Gardens. The Respondent explains that it is general practice for the LPS to value a conservatory as ancillary space and therefore at a lower rate than habitable

space. Ms McElhatton states that she has estimated the measurements of this conservatory from map (aerial view) at 20m<sup>2</sup>.

- Ms McElhatton refers to a table of comparable evidence which demonstrates the values attached to conservatories attached to the comparable properties, upon which I will comment later in this Decision.
- The Respondent demonstrates that a property situated at 48 Belvedere Park has a conservatory of 9m<sup>2</sup> which is an estimate to have added Capital Value of £5,000 when the conservatory was added. A property situated at 8 Hillside Crescent, where a conservatory of 10m<sup>2</sup> was added, an estimated value of £10,000 was added to the capital value. In relation to a property situated at 47 Willesden Park, for a conservatory giving an additional 11m<sup>2</sup>, £10,000 was added to the capital value of the property.
- Taking into account the above information Ms McElhatton estimates that for 1 Hillside Drive the conservatory has added an additional 20m<sup>2</sup> to the property and increased the Capital Value by £15,000. This indicates that the property without the benefit of a conservatory would have a habitable Space of 169m<sup>2</sup> and this and subsequently in capital value of £275,000. Therefore the capital value of £290,000 to include the conservatory (in a total gross external area of 189.52m<sup>2</sup>) is considered in tone with the schedule of comparable evidence in Appendix 1.
- The subject ground floor extension has a tiled roof and this is been valued as habitable space.
- The Respondent notes that the Appellants have analysed the subject property and the comparable on a rate per square metre basis. The Respondent states that this is not the correct approach. Ms McElhatton refers to schedule 12 paragraph 7 (2) of the Rates (Northern Ireland) order 1977. This directs that *“regard shall be had to the Capital Values in the valuation list of comparable hereditament’s in the same state and circumstances when assessing a capital value for rates purposes”*. Ms McElhatton helpfully referred the Tribunal to the case of Ashraf Ahmed and The Commissioner of Valuation for Northern Ireland in N I VT 12/15 in this regard.
- Ms McElhatton referred to Appendix 1 of the Presentation of Evidence where she lists the Schedule of Comparisons of other properties which she considers

is in tone with the subject property and supports the revised capital valuation of £255,000.

### **Decision of the Tribunal**

13. The Appellant's case to the Tribunal is that the Capital Value assessment of the valuation of the property of £255,000 should be £232,000.
14. The purpose of the Tribunal is to consider the evidence and apply the relevant law to the issue of capital valuation. The valuation of the subject property has been assessed in accordance with the legislation contained in the Rates (Northern Ireland) Order 1977. Schedule 12 Paragraph 7 (as set out above at paragraph 7 of this judgment).
15. Article 54(3) of the 1977 Order provides that, on appeal, any valuation shown in a valuation list shall be deemed to be correct until the contrary is shown. Thus, any appellant must successfully challenge and displace the presumption of correctness otherwise the appeal will not be successful.
16. The Appellants have raised two legal issues. First that the subject property should not be assessed in accordance with the "tone" of the list and it should not play a part - especially when there is monetary value attached. The Tribunal cannot accept this contention. Schedule 12 of the 1977 Order requires that in cases of revision of a Valuation List "*regard shall be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances.*" This is known as the "*Tone*" of the list and in essence confirms that comparability is a cornerstone of the rating system. The Comparability of Rating Hereditament was described in the case of Dawkins (VO) v Ash Brothers and Heaton (1969) 2 A C336 in which Lord Pearce states "*Rating seeks a 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 values of the rest.*"
17. A schedule of comparable evidence was gathered to illustrate the Capital Value assessments of similar properties to the subject property (I refer to Appendix 1).
18. Secondly the Appellants have challenged the method of calculation of the LPS and the Commissioner for Valuation. The Respondent has referred the Tribunal to the case of Ashraf Ahmed v Commissioner of Valuation NIVT12/15. At paragraphs 7.6-7.7 of this judgment the Chairman, Mr Reid, stated "*the Tribunal*

*does not accept that the Capital Value of a property can be determined or compared with the Capital Value of another property by comparing its size and Capital Value and arithmetically calculating the Capital Value per m<sup>2</sup> of either property. Rather, Schedule 12 of the 1977 Order requires that in assessing the amount which the Subject Property might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant AVD Antecedent Valuation Date (in this case 1 January 2005) regard must be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances.”* The Tribunal as it has in other cases concurs with this approach.

- 19.** The Tribunal has carefully considered the details and characteristics of all of the properties put forward by the parties as suggested comparable hereditaments in respect of the Subject Property. The Appellants and the Respondent have referred the Tribunal to a number of potentially comparable hereditaments. It is noted the capital valuation of the subject property was valued at £255,000 with gross external area of 151m<sup>2</sup>. 1 Hillside Gardens with a habitable area for 189.52m<sup>2</sup> has a CV of £290,000. 2 Hillside Gardens with a habitable area 141m<sup>2</sup> has a CV of £250,000. 9 Hillside Gardens with a habitable area 141.35m<sup>2</sup> has a CV of £250,000, 5 Hillside Gardens Malone Lower Belfast has a habitable area of 133m<sup>2</sup> and a CV of £245,000. The most analogous property is 42 Hillside Drive a similar property with a habitable area of 156m<sup>2</sup> namely 5m<sup>2</sup> bigger than the subject property and has a Capital Valuation of £260,000. These selected comparables demonstrate a strong relativity which supports the assessment of £255,000, as the valuation of the subject property.
- 20.** The Tribunal’s unanimous decision is that the Appellants’ appeal is not allowed and the Capital Valuation assessed, 3 Hillside Gardens, Malone Lower, Belfast BT9 5 EP of £255,000, is correct.

**Signed: Mr Stephen Wright, Chairman**

**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to all parties: 6<sup>th</sup> September 2018**