

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

CASE REFERENCE NUMBER: 43/13

BRENDAN McGARVEY - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

**DECISION OF PRESIDENT OF THE NORTHERN IRELAND VALUATION
TRIBUNAL ON APPLICATION FOR LEAVE TO APPEAL TO THE LANDS
TRIBUNAL**

I do grant leave to the appellant to appeal to the Lands Tribunal for the reasons set out below.

REASONS

Introduction

1. The appellant, by Notice of Appeal, appealed against the decision of the Commissioner of Valuation made 3 January 2014 in respect of the valuation of a hereditament situated at Number 26 Church Dale Meadows, Gortin, Omagh, County Tyrone BT79 8AZ (“the subject property”) whereby the domestic capital value was determined at a figure of £95,000 but the Commissioner of Valuation had determined an allowance of 10% “as a temporary reduction reflecting the unfinished nature of the site”, as is recorded in the subsequent decision of the Northern Ireland Valuation Tribunal (“the tribunal”).
2. The matter was dealt with by written procedure under Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007 (as amended) by the tribunal on 10 June 2014 and by Decision with reasons promulgated by the tribunal on 10 June 2014 (“the Decision”) the tribunal’s determination, as set forth in the Decision, was that the appeal should be upheld. The determination of the tribunal was that the capital valuation should be subject to an appropriate allowance, reducing the capital valuation from £95,000 to £75,000, that latter being an allowance of just over 20%, for the reasons stated in the Decision.

3. The appellant has now requested leave to appeal. By letter dated 23 August 2014 sent to the Office of the Tribunal and received on 28 August 2014 the appellant sets forth his reasons for requesting an appeal. In the letter of 23 August 2014 the appellant states:-

The basis for my appeal is:

1/ The Rates (NI) Order 1977 has not been applied i.e. section rateable values 8. Basis of valuation capital value general rule

2/ The law has not been applied equally i.e. I am being asked to follow and abide by the law, while the tribunal has ignored the law in its decision and implementation of the Rates (NI) Order 1977

The appellant had also endeavoured to appeal by lodging with the Lands Tribunal a document dated 1 August 2014 in Form AC with the Registrar of the Lands Tribunal. That was received by the Lands Tribunal on 6 August 2014. Quite properly, the Lands Tribunal referred the matter to the Secretary of the Northern Ireland Valuation Tribunal in order that the statutory leave procedure might be applied. Annexed to the said document dated 1 August 2014 in Form AC there is a document from the appellant wherein the appellant states:-

4. The law has not been applied fairly. Please refer to Northern Ireland Rates Order. Section rateable values 8. Basis of valuation capital value - general rule. 7.(i) subject to the provisions of this schedule, for the purpose 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 have been expected to realise if it had been sold on the open market by a willing seller.

5. The house value to be reduced to £40,000.

6. There is no open market value to the property since no mortgage can be obtained only a cash value.

4. The matter has been accordingly referred to me as President of the Northern Ireland Valuation Tribunal to determine whether or not to grant leave to appeal to the Lands Tribunal under the statutory provisions which are mentioned below.
5. The foregoing documents set forth particulars of the grounds upon which such a request for leave to appeal is made by the appellant.

The Applicable Law

6. The statutory provisions relevant to my determination in the matter are to be found in the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”) and in the Lands Tribunal (Amendment) Rules (Northern Ireland) 2007 (“the Lands Tribunal Rules 2007”). These are as follows (in respect of the 2006 Order): -

“Appeal from decision or direction of Valuation Tribunal 54A. —(1) Any person who is aggrieved by any decision or direction of the Valuation Tribunal under Article.... 54(2) may, with the leave of—

- (a) the Lands Tribunal; or (b) the President of the Valuation Tribunal,
appeal to the Lands Tribunal.”

These are as follows (in respect of the Lands Tribunal Rules 2007): -

“ 4. In rule A1—

(a) -

(b) at the end there shall be added the following paragraphs—

“(4) an appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal shall be instituted by serving on the registrar a notice of appeal in accordance with Form AC within 28 days from the date of the grant of leave of appeal by the President of the Valuation Tribunal.

(5) A notice of appeal under paragraph (4) shall be accompanied by—

(a) a copy of the decision or direction of the Valuation Tribunal against which the appeal is made; and

(b) a copy of the decision of the President of the Valuation Tribunal granting leave to appeal.

(6) An application for leave to appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal may be made to the Lands Tribunal only where the applicant has been refused leave to appeal by the President of the Valuation Tribunal.”

The Determination

7. My function, as President of the Northern Ireland Valuation Tribunal, is to identify proper reasons for the granting of leave to appeal. It appears that the basis of the appeal does not relate to the failure in any manner to afford a fair and proper hearing, albeit by the written procedure, but rather the basis of the appeal concerns the tribunal’s application of the statutory provisions to the facts, with particular reference to the statutory basis for capital valuation. The

tribunal, I note, in the Decision (in the third, but unnumbered, paragraph of the Decision) makes only a rather brief or cursory reference to the material statutory provisions, but does not expressly provide the detail of the statutory basis for capital valuation, which, nonetheless, the tribunal states has been fully considered by the tribunal.

8. It has become common for decisions of the Northern Ireland Valuation Tribunal not fully or comprehensively to recite the material statutory provisions, for reasons of brevity, as these have been referred to more fully in earlier decisions of the Northern Ireland Valuation Tribunal. For completeness, however, I now set out below the material provisions.

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."

9. In making this determination, I accept the assurance given in the Decision that the foregoing provisions were fully considered by the tribunal. It seems to me, however, that what the appellant is challenging, in reality, by seeking leave to appeal in this matter, relates to the degree or extent of the capital value reduction fairly and properly to be made and applied as reflecting the unfinished nature of the site, in reference to the statutory basis for assessment mentioned above.
10. If I am correct, it does seem to me, given the facts of the case and in particular any more general principles or broader issues or material considerations emerging therefrom relating to the manner and degree of the proper and fair assessment of capital valuation in these circumstances (relating to unfinished estates and developments), that the appellant has raised a proper ground or issue upon which to grant leave to the appellant to appeal to the Lands Tribunal.
11. Accordingly, I grant leave to the appellant to appeal to the Lands Tribunal upon the issue of whether or not the tribunal has properly applied the statutory provisions and any relevant and material considerations to the determination of capital value in respect of the subject property in this matter, such as is determined and set forth in the Decision.

Dated this 2nd day of September 2014

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