

NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: NIVT 18/17

**JOHN McMANUS AND JULIE ANN McMANUS APPELLANTS
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

Northern Ireland Valuation Tribunal

**Chairman: Mr. Alan Reid LL.B
Members: David McKinney FRICS and Robert McCann**

Date of Hearing: 29th August 2018 - Belfast

DECISION

The unanimous decision of the Tribunal is that the Notice of Decision of Appeal of the Commissioner of Valuation for Northern Ireland in respect of the valuation of the property at 14 Church View, Portaferry, County Down, BT22 1LY as contained in the Certificate of Alteration dated 23rd October 2017 is upheld in confirmation of the Capital Value of £95,000 and the Appellants' 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 dated 30th October 2017 the Appellant appealed to the Northern Ireland Valuation Tribunal ("the Tribunal") against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland ("the Commissioner") dated 23rd October 2017 in respect of an alteration to the Capital Value of a hereditament situated at 14 Church View, Ballyphilip, Portaferry, Newtownards, County Down, BT22 1LY ("the Subject Property").
- 1.3 The parties to the Appeal had indicated that they were each content that the Appeal be disposed of on the basis of written representations in accordance with Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007 ("the Rules") and accordingly there was no appearance before the Tribunal by or on behalf of any of the parties.

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 heard no oral evidence but had before it copies of various documents including the following:-

- 3.1 Valuation Certificate issued by the Commissioner of Valuation on 23rd October 2017 with an effective date of 18th August 2017.
- 3.2 The Appellant's Notice of Appeal dated 30th October 2017.
- 3.3 A document entitled "Presentation of Evidence" submitted on behalf of the Commissioner by Seline McElhatton MRICS of Land and Property Services and received by the Tribunal on 29th January 2018.
- 3.4 The Appellants reply to the Respondent's "Presentation of Evidence" as submitted to the Tribunal by the Appellants on 23rd February 2018.
- 3.5 A further response submitted by the Respondent to the Tribunal on 3rd May 2018 in response to the Appellants' comments of 27th February 2018.
- 3.6 An email dated 31st May 2018 submitted by the Appellants to the Tribunal in response to the comments of the Respondent submitted on 3rd May 2018.

All of these documents had been provided to both of the parties who had each been given an opportunity to consider and respond to them before being considered by the Tribunal.

4. The Facts

Based upon the information before it the Tribunal determined upon the balance of probabilities the following facts: -

- 4.1 The Subject Property is a privately built and owned two storey end of terrace property constructed of cavity block construction and with a pitched slate roof. It was constructed in or around 2016 and purchased by the Appellants in 2017. It has double glazed windows, a rear garden and a parking space to the front of the dwelling.

- 4.2 The gross external area (“GEA”) of the Subject Property is 109.44 m². The Tribunal had no other information regarding the title to the Subject Property nor regarding its physical construction and characteristics save as mentioned in the papers before the Tribunal and referred to herein.
- 4.3 The Subject Property had previously been entered into the Capital Valuation List with a Capital Value of £100,000 on 20th September 2017.
- 4.4 On 2nd October 2017 the Appellants had lodged an Appeal against the District Valuer’s decision in relation to the Capital Value to the Commissioner of Valuation which resulted in a revised Certificate of Valuation being issued on 23rd October 2017 indicating a reduced Capital Value of £95,000. It is this decision of the Commissioner of Valuation which is under Appeal in this Hearing.
- 4.5 In arriving at the Capital Value Assessment figure of £95,000, regard was had to the Capital Value Assessments of other properties in the Valuation List considered comparable. These comparables were set out in an Appendix to the “Presentation of Evidence” submitted on behalf of the Commissioner. There were a total of six comparables. Further particulars of those comparables were provided together with photographs of the Subject Property and of all of the comparables together with satellite images of the relevant area of Portaferry to indicate the locations of the Subject Property and the comparables.
- 4.5.1 The first comparable was the property at 5 Church Street, Portaferry which had a GEA of 101 m². It was a post-1990 two storey end of terrace house with a garden and an unchallenged Capital Value of £85,000.
- 4.5.2 The second comparable property was the property at 2A Elmgrove Crescent, Portaferry which was also a post-1990 end of terrace house with a garden. It was described as being “part of 1966-1990 Public Sector Estate”. It had a GEA of 85 m² and an unchallenged Capital Value of £75,000.
- 4.5.3 The third comparable was the property at 4 The Saltpans, Portaferry. Again this was a post-1990 terrace house although in this case it was a mid-terrace. It had a garden. It was noted as fronting Shore Road, Portaferry but did not have a sea view. It had a GEA of 103 m² and an unchallenged Capital Value of £100,000.
- 4.5.4 The fourth comparable was the property at 19 The Saltpans, Portaferry. This again was a mid-terrace built post-1990 and had a garden. It also had sea frontage. Its GEA was 102 m² and it had an unchallenged Capital Value of £165,000.
- 4.5.5 The fifth comparable was the property at 13 Windmill Hill, Portaferry. Again this was a post-1990 terrace house with a garden. Its GEA was 134 m² which was significantly larger than the subject property or any of the other comparables. Its unchallenged Capital Value was £105,000.

- 4.5.6 Finally, the sixth comparable was number 12 Church View, Portaferry. This was an end of terrace house with outbuilding and garden constructed at some time between 1946 and 1965. It had previously been within the Public Sector. It had a GEA of 85 m² along with an outbuilding having an area of 8 m². Its unchallenged Capital Value was £80,000

5. The Appellant's Submission

The Appellants, in summary, made the following submissions in his Notice of Appeal and in their written submission to the Tribunal:-

- 5.1 The Subject Property was part of a small development of six houses. The first three of these houses were built in 2015 and the Subject Property “mirrored” those houses in size and build. The first three houses built were numbers 38, 40 and 42 High Street and each initially had a Capital Value of £75,000. The Appellants contended that, as Capital Valuations of £75,000 had been applied to each of those three dwellings, the Capital Valuation of the Subject Property should also have been £75,000. The Appellant also suggested that the valuation of houses within the Development had been “subject to the arbitrary decisions of individuals within LPS rather than the consistent application of Rules and Procedures”.
- 5.2 The Appellants referred to Ms McElhatton’s justification for increasing the valuation of the Subject Property from £75,000, that previous valuation having been based upon pre-1919 terraced properties in Portaferry. The Appellants contended that in order to address that “perceived mis-judgement” she had based the valuation of the Subject Property (and the re-valuation of three other properties in the same Development as the Subject Property) by reference to post-1990 terraced properties in the locality but had failed to assess the two most recent Residential Developments within the locality at the Gables and Demesne Hollow housing developments. The Appellants contended that both of these Developments were within one kilometre of the Subject Property and were of similar construction type and construction date. In particular, the Appellants suggested as suitable comparables the properties at 17 The Gables and 10 Demesne Hollow.
- 5.3.1 The property at 17 the Gables, suggested by the Appellants as a suitable comparable property is a three-bedroomed semi-detached property with a garden to the rear and a detached garage and tarmacked driveway with parking for two cars and a lawn. The Appellants contended that this was in all aspects a superior property to their own. It was built post-1990. It had a GEA of 117 m². Its Capital Value was £100,000 – £5,000 more than the Subject Property.
- 5.3.2 The second comparable put forward by the Appellants was the property at 10 Demesne Hollow. Again this was a three-bedroom semi-detached property with a master ensuite bedroom, footings in place for a detached garage in the large back garden and parking for two cars in a driveway beside a front lawn. With a GEA of 122 m², the property was some 13 m² larger than the Subject

Property but had an identical Capital Value of £95,000. Again, the Appellants contended that this was a superior property to theirs.

- 5.4 The Appellants' evidence also was that 17 The Gables was currently being marketed with an asking price of £125,000 and 10 Demesne Hollow was being marketed with an asking price of £128,500 compared to the purchase price for the Subject Property paid by the Appellants in August 2017 of £110,000.
- 5.5 With regard to the comparables proposed by the Respondent, the Appellants contended that the properties at 2a Elmgrove Crescent and 12 Church View had been built "a considerable time prior to 1990" and the property at 19 The Saltpans was "an exclusive sea front property valued at between £70,000 to £90,000 more than our property". They further contended that the property at 13 Windmill Hill was significantly larger than the Subject Property and had a master ensuite bedroom with panoramic views over Strangford Lough and the Appellants therefore questioned the validity of using any of the properties at 2a Elmgrove Crescent, 12 Church View or 19 The Saltpans as suitable comparables.
- 5.6 The Appellants contended that the appropriate Capital Valuation for the Subject Property was £75,000, being the same Capital Valuation as the original valuation placed upon other properties in the same Development as the Subject Property as originally determined by LPS.

6. The Respondent's Submissions

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

- 6.1 The Capital Value Assessment of the Subject Property had been carried out in accordance with the legislation contained in the 1977 Order. In particular as required by Schedule 12 of the 1977 Order regard was had to the Capital Values of other properties in the Valuation List.
- 6.2 It was submitted on behalf of the Commissioner that for the purposes of a revision to the Valuation List the relevant legislation requires that regard should be had to the assessment of other comparable hereditaments already in the Valuation List which were in the same state and circumstances as the Subject Property.
- 6.3 With regard to the Appellants' submission that identical properties in the same new Housing Development as the Subject Property had been valued at £75,000, the Respondent's evidence was that the property at 42 High Street was addressed as and accessed from High Street. When researching comparable evidence for the Subject Property Ms McElhatton stated that she had noted that 42 High Street had been valued by reference to pre-1990 terraced properties in Portaferry which she considered was an incorrect approach as they were not in the same state and circumstances as the Subject Property. Being older than the Subject Property she considered that this was a factor which resulted in lower Capital Value Assessments and she

was of the opinion that comparable evidence of post-1990 terraced houses in the locality supported the Capital Value Assessment of the Subject Property at £95,000. Her evidence was that as a consequence, the Capital Valuation of number 42 High Street had been reviewed and increased to £95,000 as at 19th January 2018. Her evidence further was that other properties in the same development remained to be valued and that there were three cases in progress in that regard.

- 6.4 With regard to the Appellants' suggestion that the valuations had been subject to arbitrary decisions of individuals in LPS Ms McElhatton stated that she had based her evidence upon an analysis of comparable properties pursuant to the requirements set out in paragraph 7 (2) of Schedule 12 to the 1977 Order, she considered that based upon the comparable evidence as submitted by her, the Capital Valuation of the Subject Property was fairly reflected at £95,000 and indicated a consistent approach of the relevant rules and procedures.
- 6.5 The Respondent considered that the revised Capital Valuation of £95,000 was considered to be in tone with other similar post-1990 terrace properties in Portaferry and particularly by reference to the six comparables referred to at paragraphs 4.5.1 to 4.5.6 above.
- 6.6 In summary, the Respondent contended that the Subject Property had been valued in tone with other post-1990 terrace properties in Portaferry and that its Capital Value of £95,000 was fair and reasonable and maintained "relativity" with the older public sector housing at Church View Portaferry.

7. The Tribunal's Decision

- 7.1 Article 54 of the 1977 Order enables a person to appeal to the Tribunal against a decision of the Commissioner on appeal as to Capital Value. In this case the Capital Value for the Subject Property has been assessed at the Antecedent Valuation Date ("AVD") of 1st January 2005 at a figure of £95,000. 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.
- 7.2 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 Appellants 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.
- 7.3 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.

- 7.4 The Tribunal then turns to consider whether the evidence put before it or the arguments made by the Appellants are sufficient to displace the statutory presumption. Those arguments have been summarised above.
- 7.5 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 (in this case 1st January 2005) regard must be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances. The Appellant and indeed the Respondent have referred the Tribunal to a number of potentially comparable hereditaments the details of which are referred to above.
- 7.6 As Schedule 12 requires that the Capital Value of the Subject Property must be assessed as the amount which it might reasonably have been expected to realise if sold on the Open Market by a willing seller on 1st January 2005, evidence of its current value (and of the current value of comparable hereditaments in the same state and circumstances) is not relevant.
- 7.7 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. Having done so, the Tribunal is satisfied on the balance of probabilities that, of the comparable properties placed in evidence before the Tribunal by the Parties, those at 4 The Saltpans, 19 The Saltpans, 13 Windmill Hill, 12 Church View, 17 The Gables and 10 Demesne Hollow are less appropriate as comparable properties than those at 42 High Street, 5 Church Street and 2a Elmgrove Crescent. The details of all of these properties have been referred to in the record of evidence above. Taking account of the type of construction, size age and location of the properties at 42 High Street, 5 Church Street and 2a Elmgrove Crescent Portaferry, the Tribunal was satisfied on the balance of probabilities that these supported a Capital Valuation of £95,000 in respect of the Subject Property.
- 7.8 The Tribunal is therefore satisfied on the balance of probabilities that the evidence placed before it by the Parties supports the Respondent's contention that the appropriate Capital Value Assessment of the Subject Property at the AVD of 1st January 2005 is £95,000 and that the Appellant's evidence and submissions are not sufficiently persuasive to displace the statutory presumptions as referred to above.
- 7.9 Accordingly, the unanimous decision of the Tribunal is that the Appeal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland

in respect of the Valuation of the Subject Property as contained in the Notice of Decision dated 23rd October 2017 in the sum of £95,000 is upheld and the Appeal is dismissed.

Signed: Mr Alan Reid, Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 4th October 2018