

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: 16/14

MICHAEL BALLENTINE – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr David McKinney FRICS and Dr Peter Wardlow

DECISION ON REVIEW

The unanimous decision of the tribunal is that there are no proper grounds made out by the appellant to enable the tribunal to review the decision of the tribunal issued on 16 January 2015 and thus the tribunal's decision is affirmed and the appellant's application for review is dismissed.

REASONS

Introduction

1. This is an application for review of a decision of this tribunal ('the decision') in respect of a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order"). The decision was issued to the parties by the Secretary of the Northern Ireland Valuation Tribunal ('the tribunal') on 9 March 2015.
2. The appellant, by letter ('the review letter') dated 16 March 2015, requested that the tribunal review its decision.
3. By a note dated 22 April 2015 the respondent replied to the review letter.
4. The appellant subsequently by letter requested an oral hearing of the review application and this was arranged and the matter proceeded on 29 May 2015.

The appellant Mr Ballentine attended the hearing along with his wife Mrs Ballentine, and represented himself. There was no representation by the respondent.

The law

5. The Valuation Tribunal Rules (NI) 2007 ('the Rules'), as amended provide at rule 21 as follows in respect of the review of any decision of the tribunal:

“21.-(1) If, on the application of a party or its own initiative, the Valuation Tribunal is satisfied that-

(a) its decision was wrong because of an error on the part of the Valuation Tribunal or its staff; or

(b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had good reason for failing to be present or represented; or

(c) new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; or

(d) the interests of justice require the Valuation Tribunal may review the relevant decision.”

The hearing and the arguments

6. At the outset of the hearing the tribunal, apologised for the late running of the tribunal that morning and thanked the appellant and his wife for their forbearance in this regard. As it appeared that the appellant had not had sight of the respondent's note dated 22 April 2015, the tribunal afforded the appellant some time to consider the nature of this response.
7. The tribunal explained the nature of a review of a decision of the tribunal and that initially the appellant would have to establish proper grounds upon which the tribunal might proceed to review the decision. If such grounds were established the matter could proceed to review. However if such grounds were not established the review could not proceed. The tribunal clarified with the appellant which of the statutory grounds were being relied on. It was confirmed by the appellant that the grounds upon which the appellant relied was that the tribunal's decision was wrong because of an error on the part of the tribunal and that it was in the interests of justice for the tribunal to review the decision.

The appellant's submissions

8. At the original hearing of this matter reference was made to the property at 47 Sharman Road, Belfast. The respondent had stated that this property had not been assessed for capital value with the extension which had been carried out to the property. The appellant stated at the review hearing that he had investigated the history of the property. He stated that the extension to that property had been carried out in 1976 when the owner was a person called Carol. She owned the property until 1993 when Mr Kieran Kelly and Mrs Ann Kelly moved into the property. The appellant indicated that a representative of the respondent had attended the property when Mr and Mrs Kelly moved into the property. The capital value of this property is stated to be £200,000 which the appellant believed to be a correct valuation of the property with the extension. The appellant stated that he could not understand why the respondent did not consider the extension at that time. The appellant further stated that the extension to his own property at 49 Sharman Road, Belfast is similar to that of 47 Sharman Road, Belfast in that both extensions are to the side and to the rear. The difference relates to the roof in that the roof extension to 47 Sharman Road is flat and to the subject property is slightly pitched and tiled. The appellant argued that the respondent had misled the tribunal by saying that 47 Sharman Road has not been valued and that because of this the tribunal made an error in its decision.

9. In respect of this submission the respondent states that it indicated at the hearing of this matter that the property at 47 Sharman Road, Belfast was valued but that it was the extension was not valued. It was further indicated that the District Valuer is aware of the status of the property and will consider if, due to the extension, the property requires to be revalued. The respondent further indicated that the property as currently valued has a capital value of £200,000 and has a gross external area of 115m² and a MH of 22m² and that this comfortably supports the capital value of the subject property.

10. The appellant's second submission is that the comparables given at the hearing of the matter by the respondent, namely 92 Sharman Road, 40 Sharman Road , 104 Sharman Road and 6 Cricklewood are all bigger than the subject property in that all the comparable properties have two storey extensions with four bedrooms and en-suites added to their third or fourth bedrooms. All these have large extended bathrooms. In contrast the appellant states that his property only as a single storey extension. The appellant stated that he cannot understand how there is only a £5,000 difference in the capital valuation of their property when compared to the other properties referred to in this paragraph.

11. The third submission forwarded by the appellant related to the measurement of the gross external area (GEA) of the property. The appellant indicated that he had discussed the GEA of the property with the builder who built the extension and indicated that he considered that the extension increased the size of the property by 23% and not by 50% as stated by the respondent. The appellant considers that this represents an error by the respondent. The appellant also referred to the fact that the comparable properties were sub-divided to provide more rooms. However this is not the case. He confirmed that he and his wife have visited all the comparable properties and they are not sub-divided but have larger rooms created for their intended purpose.

12. In respect of this submission the respondent stated that at the original hearing of this matter the appellant referred to the GEA as being 138m². The respondent indicated that even if the GEA referred to as 138m² was correct then the valuation list shows that no change would be made to the capital value of the subject property. The respondent also stated that the GEA was fully discussed at the hearing of the matter. In relation to the comparable properties, the representative of the respondent stated that at the hearing he had not referred to the fact that the properties were sub-divided to create more rooms but rather that it was a matter of personal choice for an occupier to decide whether to sub-divide rooms or to maintain larger rooms. The respondent stated that the fact was that the comparable properties have a similar GEA to the subject property, irrespective of the number of rooms. The appellant also considered that the pictures of comparable properties provided by the respondent were misleading.

13. The appellants fifth submission was that they had asked the tribunal to visit the subject property and the comparable examples mentioned so as to view the differences but no one accepted the invitation.
14. Finally the appellants submitted that the in the interests of justice the wrong decision was made based on misleading information and a huge miscalculation using the comparable samples provided by the respondent.

The tribunal's determination of the issues.

15. In relation to the submission that the decision of the tribunal on the original hearing of this matter was wrong due to an error on the part of the tribunal, the tribunal determines as set out below.
16. In respect of the capital valuation of 47 Sharman Road, Belfast, the respondent states that the property at 47 Sharman Road, Belfast itself has been assessed for capital value but it has not been assessed for capital value to include the extension which has been carried out to the property. The appellant believes that it has been revalued with the extension at a capital valuation of £200,000. However by his own admission the appellant conceded that it is difficult for him to establish if the property has been revalued with the extension. The arguments in respect of this issue were fully rehearsed at the hearing of this matter. Indeed the issue is referred to in paragraph 12 of the decision. Furthermore the tribunal found (in paragraph 33 of its decision) that as the capital value of the property at 47 Sharman Road, Belfast with the extension had not been carried out that the tribunal was not in a position to take this property into account when considering the capital value of the subject property. However the tribunal found that there were other comparable properties, as referred to in its decision, to enable it to reach its decision.
17. In relation to the comparables forwarded by the respondent the issues in respect of these were fully rehearsed at the hearing of this matter. Mere application to re-argue at this review hearing, expressing dissatisfaction with the tribunal's decision is insufficient to warrant a review of the decision.

18. The appellants submissions relating to the GEA of the property were again the subject of dispute at the hearing of this case. The tribunal found at the hearing that the GEA of the property was 145.91m² with a garage of 16m².
19. In respect of the contention that the respondent misled the tribunal by the perspective contained in the pictures of the comparable properties in the Presentation of Evidence, these issues again were the subject of debate at the hearing of the matter. The tribunal notes that the appellant at the hearing produced his own photographs of the comparable properties submitted by the respondent. Therefore he availed of the opportunity to forward his own arguments in respect of these properties.
20. In respect of the invitation to view the subject property and the comparable properties, there is power in rule 16 of the Valuation Tribunal Rules (NI) 2007 (as amended) for any valuation tribunal to inspect any hereditament which the subject of an appeal if it thinks fit. There does not appear to be such power in rule 16 in respect of comparable properties. In this case the tribunal has not considered it necessary to inspect the hereditament given the extensive arguments forwarded by both the appellant and the respondent at the hearing of this matter.
21. Therefore in respect of the ground that the tribunal has made an error the tribunal finds that the appellant has failed to demonstrate that the tribunal has made such an error the tribunal determines in respect of this ground that there is nothing to afford a basis of review of the decision.
22. In respect of the final submission the appellant has contended that the matter should be reviewed as it is in the interests of justice to do so given that the decision was based on misleading information and a huge miscalculation using the comparable samples provided by the respondent.
23. The question of where it would be appropriate to review a matter under the 'interests of justice' ground has been considered by the tribunal in other cases,

notably in *Cairns v Commissioner of Valuation*. In that case the President of the Valuation Tribunal concluded:

“In the absence of any identified authority within the tribunal’s own jurisdiction being drawn to the tribunal’s attention, the tribunal is of the view that the ‘interests of justice’ ground ought properly to be construed fairly narrowly; that certainly appears to be the accepted practice in other statutory tribunal jurisdictions. Thus the ‘interests of justice’ ground might, for instance, be seen to apply to situations such as where there has been some type of procedural mishap.... Generally it is broadly recognised that the ‘interests of justice’ in any case must properly encompass doing justice not just to the dissatisfied and unsuccessful party who is seeking a review but also to the party who is successful. Further, there is an important public interest in finality of litigation. The overriding objective contained within the tribunal’s rules also bears upon the matter.”

24. In respect of this argument the tribunal notes that the appellant and his wife attended the hearing of the matter by the tribunal and were given the time they wished to present the case in the manner desired and also to deal with the respondent’s case and evidence. In respect of the substance of the arguments raised in the appellant’s review application, the tribunal has expressed its findings earlier. Therefore on this ground the tribunal fails to see how there are any grounds to constitute the proper basis of a review of its decision in the interests of justice.

Conclusion

25. In conclusion, in relation to the application for a review of the decision of the tribunal, the tribunal’s unanimous determination is that nothing presented by the appellant affords any basis for the decision to be reviewed. This was confirmed orally to the appellant at the hearing of the matter on 29 May 2015 and it was indicated that written reasons for this decision would be provided.

26. Accordingly it is confirmed that the tribunal’s decision is affirmed as promulgated and the appellant’s application for a review is dismissed by the tribunal, without further order.

Mr Charles O'Neill
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 29/6/15