

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

Case Reference Number – 27/15

MICHAEL MCMULLAN - APPELLANT

and

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

NORTHERN IRELAND VALUATION TRIBUNAL

Date of Hearing: 1 September 2016

Chairman: Garrett E. O' Reilly

Members: Eric G. Spence and Angela Matthews

Background

1. This is a reference to the Northern Ireland Valuation Tribunal under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (the 1977 Order) which enables a person to appeal to the Northern Ireland Valuation Tribunal against a Valuation assigned to property by the Commissioner of Valuation of Northern Ireland.

2. The Appellant appealed the Capital Value of £285,000.00 (the Valuation) situate at and known as 10, Crevolea Road, Coleraine BT51 4ES (the Property).

5. The Appellant has appealed the Valuation on the ground that the Property is not completed and the Valuation is not consistent with similar dwellings of the same size in the district.

Representation

The Appellant was represented by his wife Mrs. McMullan and the Respondent was represented by A. Elkin and G. Neill of Land and Property Services.

Documents before the Tribunal

1. Valuation Certificate of Land and Property Services dated 7 July 2015 whereby the Commissioner of Valuation certified the Capital Value of the Property to be £285,000.00.
2. Notice of Appeal dated 3 August 2015 whereby the Appellant appealed the Valuation (the Notice of Appeal).
3. Presentation of Evidence dated 7 October 2015 of Alison Elkin MRICS (the Presentation of Evidence).
4. Correspondence of the Appellant supplemental to the Notice of Appeal whereby the Appellant submitted letters with attachments (the Correspondence).
5. Statements of Alison Elkin in relation to Completion Notices.
6. Statement of Lamont and Company whereby the Appellant's accountant confirmed that the Appellant was self employed within the construction industry.
7. Order of the Northern Ireland Valuation Tribunal dated 28 April 2016 whereby it was ordered that the Appellant serve documents upon the Respondent.

Evidence and Submissions

1. Mrs. McMullan submitted that the Property was not completed and referred to the photographs of the Property in the documents to confirm her submission.
2. She also referred to the photographs of the other properties in the Presentation of Evidence to highlight the difference between the Property and the other completed properties.
3. She said that it would be unfair if the Appellant had to pay rates on the Property as not only was it unoccupied, but also it was incapable of being inhabited and further its services had never been used.
4. Mrs. McMullan also submitted that if rates were assessable on the Property then it was only fair that rates should be payable on a reduced basis having regard to the actual state of the Property and the Valuation should be reduced to £140,000.00.
5. She also gave evidence that her husband had been seriously financially prejudiced by the recession.
6. Mrs. McMullan did acknowledge that if the Property had been completed the comparable properties were similar to the subject dwelling and stated that she objected only on the basis that the subject property was not internally finished unlike the other properties.. She said that with the finance required to complete the property and make it habitable and saleable, that the Property would not sell at anything like the Valuation.

7. Ms Elkin firstly answered Mrs. McMullan's submissions in relation to the completion of any property by explaining that for rating purposes completion was not physical completion of property but a form of completion under Rating Legislation. She had explained in her Statements as a result of "new building" legislation that after the service and expiration of a completion notice and a period of one year then rates were assessable and became payable even if a property was not actually physically completed.

8. She then explained by reference to the law that the basis upon which a Capital Value was assessed and the rates became payable in respect of such a property in accordance with property values in the area as established by the Commissioner of Valuation in accordance with the 1977 Order. In the case of this valuation she made it clear that all the comparable properties which had been used in the Valuation were located very close to the Property and of similar size and comparable in most ways.

9. Ms. Elkin explained by reference to the statute that today's market values of the Property and the comparable properties were of no assistance in establishing a Capital Value of the Property as the Valuation was based on Market Values as assessed in 2005.

The Law

Article 25B of the 1977 Order as to Completion Date

(1) Schedule 8B (which makes provision with respect to the determination of a day as the completion day in relation to a new building) shall have effect.

(2) Where—

(a) a completion notice is served under Schedule 8B; and

(b) the building to which the notice relates is not completed on or before the relevant day, then for the purposes of this Order the building shall be deemed to be completed on that day.

Schedules 12(1) and 12 7(2) of the 1977 Order as to Capital Value Assumptions in a valuation

(1) "The hereditament is in an average state of internal repair and fit out, having regard to the age and character and its locality";

7(2) Regard shall be had to the Capital Value List of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised"

Article 54 (3) of the 1977 Order as to the onus of proof to establish the correctness of a capital value shown in a Valuation List -:

"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."

Decision and Reasons

The Members considered the representations, the Law and that there were two issues to be decided

1. Was the Property completed in accordance with rating legislation so that rates are payable in accordance with the Valuation? and
2. Has Mrs McMullan been able to overcome the burden of proof to show that the Valuation is not correct?

Having regard to the legislation there was no doubt in the minds of the Members that the Property was completed in the statutory sense and therefore rates became payable at the specified time and Mrs McMullan's submission that rates are not payable must be rejected.

Ms Elkin had referred to the law and explained that once the Valuation was certified an owner of property had the burden of proof to show that the Valuation was not correct. She advised that this could only be achieved if it was established that the valuation assumptions under the legislation were wrong.

Mrs McMullan had not disputed that properties used by Ms. Elkin were suitable comparison properties for valuation purposes merely that the comparable properties were physically completed and also that the Property and those properties could not be sold at their relevant valuations. However, her submissions in this regard may be correct were of no assistance in helping the Appellant overcoming the burden of proof.

Mrs. McMullan had not been able; and it was considered that it would not have been possible to overcome any of the statutory presumptions as to correctness of the Valuation.

The Members were very sympathetic to the position in which the Appellant and his wife now found themselves as a result of circumstances over which they had no control but there is no provision in the legislation to provide for any diminution in the quantum of rates payable because of financial hardship to a rate payer.

The Tribunal considered that Ms. Elkin comprehensively answered every submission made by Mrs. McMullan and did so in a most professional and compassionate manner.

Accordingly the Tribunal unanimously agreed that the Valuation was correct and dismissed the appeal.

Garrett E. O' Reilly – Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 8 September 2016