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: 25/18

RAYMOND PITHER AND RITA A FARREN – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr D McKinney FRICS and Dr P Wardlow

Date of hearing: 14 August 2019, Belfast

DECISION

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland is upheld and the appellant's appeal is dismissed.

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order"). The appellant Mr Raymond Pither attended the hearing and the Commissioner was represented by Mr Gary Humphreys and Mr James Martin.

2. The appellant by Notice of Appeal, appealed against the decision of the Commissioner issued on 2 October 2018.

3. This appeal is in respect of the valuation of a hereditament situated at 56 Clifton Road, Bangor, County Down, BT20 5HY ("the subject property").

The Law

4. The statutory provisions are to be found in the 1977 Order as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). The tribunal does not intend in this decision to set out the statutory provisions of article 8 of the 2006 Order, which amended article 39 of the 1977 Order as regards the basis of valuation, as these provisions have been fully set out in earlier decisions of this tribunal. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in this matter.

The Evidence

5. The tribunal heard oral evidence. The appellants had initially indicated in their notice of appeal that they were content for the matter to be dealt with by written submissions. The matter was then listed as such for hearing on 29 May 2019. However, the appellant, by email dated 26 April 2019 indicated that he wished to be present at the hearing but could not attend on the listed date. The matter was subsequently adjourned by a legal chairman from 29 May 2019 to a date to be fixed. The matter subsequently was listed for hearing on 14 August 2019.

6. The tribunal had before it the following documents:

   (a) The Commissioners Decision issued on 2 October 2018;
   (b) The appellant's Notice of Appeal dated 27 October 2018;
   (c) A document entitled 'Presentation of Evidence' dated 14 February 2019, prepared on behalf of the respondent Commissioner by James Martin MRICS and submitted to the tribunal for the purposes of the hearing;

(d) Letter from the appellant to the tribunal dated 5 March 2019;

(e) Notice of adjournment dated 26 April 2019.

The Facts

(1) The subject property is a privately built detached two storey dwelling built about 2015. It has a gross external area (GEA) of 278m^2 and a garage of 29m^2. The property has double glazing, full heating and all services are connected.

(2) The subject property was entered into the valuation list on 14 July 2017 with a capital valuation of £400,000. An application was made to the District Valuer on the basis that the capital valuation was too high and the District Valuer made no change to the valuation. This decision was appealed to the Commissioner of Valuation who made no change to the valuation and the matter was then appealed to this tribunal.

The Appellant's Submissions

7. The appellant stated that he had decided to retire in Northern Ireland from England and had bought the subject property as a new build in 2015. It is a development of 11 homes. He noted that the rates he was paying for his property in England were not as high as the rates for his home in Northern Ireland. He indicated that he had become aware of the fact that friends of his had a property in Northern Ireland in what the appellant referred to as a 'more prestigious area' and their rates were not as high as the rates on his property.

8. The appellant referred to the fact that the comparables used by the respondent were properties in the same development as the subject property and that all eleven properties in the development had the same capital valuation. He was of the view that it was not appropriate for the respondent to use these as comparables as if his own property had an

incorrect capital valuation then all the homes in the development had a wrong capital valuation.

9. The appellant referred to another neighbouring property (54 Clifton Road) which is smaller than the subject and it has a capital valuation of £215,000. This property sold for £315,000 three months ago.

10. The appellant stated that the respondent had not given any indication of examples of properties built at 2005 and their capital valuations.

11. The appellant referred to three other properties which he considered were relevant and very helpfully provided photographs of these. The properties are as follows:

    (a) 55A Clifton Road, Bangor, County Down which has a habitable space of 324m^2 and a garage of 25m^2. This property has a capital valuation of £400,000.
    (b) 55B Clifton Road, Bangor, County Down which has a habitable space of 324m^2 and a garage of 25m^2. This property has a capital valuation of £400,000.
    (c) 55C Clifton Road, Bangor, County Down which has a habitable space of 370m^2, ancillary space of 30.5m^2 and a garage of 25m^2. This property has a capital valuation of £465,000.

12. It should be noted at this stage that these properties are subject to review by the respondent.

13. The appellant stated that all of these properties (i.e. 55A, 55A and 55C Clifton Road, Bangor) have sea views whereas the subject property does not. Furthermore, 55A and 55B Clifton Road are larger than the subject property as well as having sea views and therefore the subject property

should not have the same capital valuation as these but its capital valuation should be less than these. He was of the view that the negative aspects to the values of these three properties as suggested by the respondent – being shared access, the sloping nature of the sites, the flat roofs on these properties were minimal in that these were “very nice houses with sea views”.

14. The appellant used a calculation of capital value per m^2 to say that taking into account the size and the capital values of 55A and 55B Clifton Road, Bangor the subject property on a pro rata basis should have a capital valuation of £343,000. He further indicated that if one made the calculation on the basis of 55C Clifton Road, Bangor, then the capital valuation of the subject property should be £348,000 maximum.

15. The appellant also queried why 55A, 55B and 55C Clifton Road, Bangor were under review. He considered that Northern Ireland needs a revaluation as he considered that some people should not suffer due to the fact that capital valuations are based on 2005 prices.

16. The appellant was of the view that the respondent was valuing new homes at today’s prices not what the price would have been some 15 years ago.

17. The appellant further referred to the Nationwide Building Society House Price Index which states that over the last four years the average house price in the United Kingdom has increased by 19%. He referred to an example of when the owner of 54 Clifton Road, Bangor placed his home on the market for sale at £310,000 (sold at £315,000); it had a capital valuation of £215,000.

The Respondent's Submissions

18. The Commissioner's Presentation of Evidence to the tribunal is that in deciding the capital value of the property regard was had to capital values in the valuation list of comparable hereditaments in the same state and circumstances. Details of these comparable properties were set out in a schedule to the Presentation of Evidence with further particulars of same, including photographs of the comparable properties. Four comparables were referred to in total. These were capital value assessments, the details of which are as follows:

    (a) The first comparable referred to was 58 Clifton Road, Bangor, Co Down, which has a gross external area of 278m^2 and a garage of 29m^2. This is a privately built (2015) detached two storey dwelling. The assessed Capital Value is £400,000.
    (b) The second comparable referred to was 66 Clifton Road, Bangor, Co Down, which has a gross external area of 283.67m^2 and a garage of 29.5m^2. This is a privately built (2014) detached two storey dwelling. The assessed Capital Value is £400,000.
    (c) The third comparable referred to was 1 Clifton Mews, Bangor, Co Down, which has a gross external area of 279m^2 and a garage of 30m^2. This is a privately built (2016) detached two storey dwelling. The assessed Capital Value is £400,000.
    (d) The fourth comparable referred to was 2 Clifton Mews, Bangor, Co Down, which has a gross external area of 278m^2 and a garage of 30m^2. This is a privately built (2015) detached two storey dwelling. The assessed Capital Value is £400,000.

19. In relation to the appellant's comparables of 55A, 55B and 55C Clifton Road, Bangor, the respondent stated that these properties do have sea

views whereas the subject property does not. However, the respondent did indicate that these properties also have negative features. These features include having shared access. Furthermore, they are on sloping sites on what is described as a “tight site”. The properties also have flat roofs. In the light of these matters the respondent would be of the view that the negative features of these three properties outweigh the positive feature of having sea views. In the light of these matters the respondent’s view is that these are not direct comparables to the subject property.

The Tribunal’s Decision

20. Article 54 of the 1977 Order enables a person who is dissatisfied with the Commissioner’s valuation as to capital value to appeal to this tribunal. In this case the capital value has been assessed at a figure of £400,000. On behalf of the Commissioner it has been contended that this figure is fair and reasonable in comparison to other properties.

21. It is appropriate to remember that there is a statutory presumption in Article 54(3) of the 1977 Order in terms that “On an appeal under this Article, any valuation shown in the valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.” It is therefore up to the appellant in any case to challenge and to displace that presumption, or perhaps for the Commissioner’s decision to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.

22. In relation to this matter, the appellant, in moving from another jurisdiction will be aware that the basis of the rating of domestic properties in Northern Ireland is different to that in other jurisdictions. Here the domestic rating system is on the basis of capital valuations as at the relevant date being 1 January 2005. This is the basis on which the tribunal must operate.
23. It is also important to state the basis on which valuations have to be assessed in the legislation. This has already been set out in decisions of

both this tribunal and indeed the Lands Tribunal. As has been pointed out in a recent decision of the Lands Tribunal in *RZ* v *Commissioner of Valuation* (VT/2&3/2016 [2017]) the tribunal in deciding cases derives assistance from the following cases

> *McKeown Vintners* v *Commissioner of Valuation* VR/9/1985
> "When, however, a revision of an entry in a valuation list is under consideration different principles come into play; in particular paragraph 2(1) and the concept of comparable hereditaments. The reason is simple. The very completion of the list, at general revaluation, by itself creates comparables, and paragraph 2(1) can begin to plays it role. That role is this. There can, as the Tribunal has already stated, be no challenge to the principles applied at general revaluation. Any challenge before the Lands Tribunal must be by way of an application for revision of an entry already in the list. As time progresses, if actual rental levels and turnover figures were used for the revision of a particular entry in the valuation list, it would inevitably result in that entry being increased to a level significantly higher than other entries in the list. There must therefore be a limiting factor, and this provided by paragraph 2(1) which, in essence, produces what is often termed a 'tone of the list', and which ensures fairness and uniformity. It does this by providing that at revision stage regard 'shall be had' to the net annual values in the valuation list of comparable hereditaments. Its role will be discussed in greater detail later. Suffice to say that the significance of this role increases with the passage of time…".
> In the subject reference for "paragraph 2(1)" read "paragraph 7(2)" for "net annual value" read "capital value" and for "rent/rental levels" read "capital value/capital value levels".
>
> *A-Wear Limited* v *Commissioner of Valuation* VR/3/2001
> "The early days are important and the Tribunal agrees with Mr Hanna that the practical reality is that, if entries are not challenged, or if challenges are abandoned, the point will have been reached within a relatively short space of time at which it would have to be said that these settlements establish a reliable Tone of the List for the hereditaments in a location or category. At that stage, although still a question of balance, by virtue of paragraph 2 of schedule 12, a district valuer is almost obliged to apply that level. Skilled assessment based on proper research may justify an adjustment or allowance in individual cases, but the Tone of the List provision, although protecting ratepayers from unfairness resulting from inflation, does make anything other than a first phase challenge difficult."

> *Elias Altrincham Properties* v *Commissioner of Valuation* VR/15/2011 "For the following reasons the Tribunal is not persuaded that Mr Elias has succeeded in displacing the presumption that the valuations shown in the valuation list were correct. Both in law and in practice the time for an effective challenge to the evidential basis, that set the tone of the list at the relevant General Revaluation, is long past. (*See A-Wear Ltd* v *Commissioner of Valuation* [2003] and *McKeown Vintners Ltd* v *Commissioner of Valuation* [1991].) Any attempt now to reconsider the principles and basis on which the tone was set would be mainly speculation … At the time the list came into operation, apart from one exception, the assessments were not challenged…"

24. Therefore, the appellant in comparing the ratio of capital value to current market value in respect of the subject property using a general house price index to conclude that the capital value of the subject property is not using the correct basis for valuation.

25. The appellant has also undertaken a calculation of capital value of a property divided by the size of the property to give an indication of the capital valuation of the subject property per m^2 on an arithmetic basis. Again, this is not the correct basis for assessing the capital valuation. The correct basis is set out in the legislation and case law referred to above.

26. In this case the tribunal accepts that the best comparables are those forwarded by the respondent. The tribunal notes that these are in the same development as the subject property. The property at 58 Clifton Road is the same size as the subject property and is valued at £400,000. This capital valuation is supported by those of 1 and 2 Clifton Mews, Bangor, which each have capital valuations of £400,000. The capital valuation is further supported by the capital valuation of 66 Clifton Road, Bangor which, although bigger than the subject and is of a different house type, is valued at £400,000.

27. In relation to the comparables forwarded by the appellant, being 55A, 55B and 55C Clifton Road, Bangor, the tribunal does not find these properties to be in the same state and circumstance as the subject property. While these properties do have sea views, they also have negative features, namely the shared access, sloping sites, flat roofs and being in a tight site. In any event these properties are currently under review.

28. The tribunal carefully considered the issue as to whether the appellant had provided sufficient challenge to the Commissioner's schedule of comparables. Taking all matters into account, in relation to the capital value of the property, the conclusion of this tribunal is that the appellant has not placed before the tribunal sufficient evidence to displace the statutory presumption as to correctness of the capital value and therefore the appeal is dismissed and the tribunal orders accordingly.

Signed: Mr Charles O'Neill, Chair
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 9 October 2019