

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: 22/14

SEAMUS CUNNINGHAM - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Eric Spence MRICS and Ms Angela Matthews BL.

Hearing: 31 March 2015, Belfast

DECISION

The unanimous decision of the tribunal is that the 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, by Notice of Appeal (Form 3) received by the Office of the Tribunal on 9 September 2014, appealed against the decision of the Commissioner of Valuation in a Valuation Certificate dated 19 August 2014 in respect of the valuation of a hereditament situated at number 120 Carrigenagh Road, Kilkeel, Newry BT34 4QA ("the subject property") whereby the domestic capital value (non-exempt) was determined at a figure of £160,000.
2. The appellant requested an oral hearing of his appeal. The matter was listed for hearing at Belfast on 31 March 2015 and the appellant appeared and represented himself at hearing. The respondent was represented by Mr James Martin MRICS, together with Mr Michael McGrady MRICS. At hearing the appellant, Mr Cunningham, very helpfully made it clear to the tribunal that he had no issue with the capital valuation, absent of the specific issues of concern which this appeal shall

address and which are mentioned in some detail below. The appellant noted that the valuation of £180,000 originally ascribed to the subject property had been reduced by £20,000 to a figure of £160,000. His contention in this appeal was that the proper capital valuation figure ought to be £130,000. The reasons for the appellant advancing that contention relate to the relative proximity of the subject property to a pig farm and to the appellant's contentions regarding nuisances stated to consist of smells, vermin, flies and noise emanating from the pig farm. The appellant in this appeal contends that these factors have not been properly and fairly taken into account in attributing the capital valuation to the subject property. The tribunal briefly discussed with the parties the comparable properties detailed in the Presentation of Evidence dated 8 December 2014 prepared on behalf of the respondent by Mr James Martin MRICS and submitted to the tribunal. It would normally be the case that the respondent would rely upon the evidence of comparable properties contained within such a Presentation of Evidence to establish the correctness of the capital valuation of the subject property, upon the statutory basis. However, the subject property was initially valued (unadjusted) at £180,000 and the appellant in the course of his oral evidence made it quite clear to the tribunal that, absent of the nuisances contended, he did not take issue with such an (unadjusted) capital value figure. He stated that such an unadjusted valuation would otherwise have been quite fair and reasonable, as far as he was concerned. Accordingly, the tribunal was not required to consider in detail the evidence of such comparable properties. The central issue in the matter, for this reason, was focused upon the degree or extent to which such (unadjusted) capital value of £180,000 ought properly to have been abated or reduced on account of the factors which are of specific relevance to this appeal. Accordingly, the tribunal carefully considered the oral and documentary evidence relevant to these material issues.

3. Mr Cunningham introduced into evidence some colour photographs. The tribunal examined the location of the subject property from the maps and photographic evidence available and also heard detailed evidence from the appellant. Evidence was also given on behalf of the respondent by Mr Martin. The issue for determination was accordingly clarified as being the extent or degree to which any alleged adverse environmental or locational factors might properly be taken into account in the determination of the appropriate capital value of the subject property. As mentioned, an adjustment of £20,000 had already been afforded, adjusting the capital value for the subject property to £160,000 and it was against that latter figure that the appellant appealed, as he felt that that figure ought to have been £130,000.

The Law

4. The statutory provisions generally concerning the capital value issue 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 many earlier decisions of this Tribunal.

The Evidence and Facts

5. The tribunal noted the written and the oral evidence and submissions. The tribunal had before it the appellant's Notice of Appeal to the tribunal (Form 3) and various documents, including the following:-
 - The Commissioner's Valuation Certificate dated 19 August 2014.
 - A document dated 8 December 2014 entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Mr James Martin MRICS and submitted to the tribunal for the purposes of the tribunal hearing.
 - Correspondence from the appellant setting out his case in writing.
 - Four colour photographs submitted in evidence by the appellant.
6. The evidence in regard to the following determined facts was made available to the tribunal from the photographs and documentation and from any oral evidence provided in the course of the hearing of this appeal. In view of the very helpful concession made by the appellant that, were it not for these factors and issues, the appellant would have indeed accepted, without any difficulty, the ascribed (unadjusted) capital value, the essential focus of the tribunal, in terms of evidence, was directed to what might be regarded as the specific environmental and locational issues. The tribunal examined the location maps available and noted that the subject property is a relatively modern single story dwelling with a double garage situated in a rural location. The subject property is located, as far as can be observed from an aerial photograph, to the north west of what appears to be quite a substantial concern, with a number of large commercial or agricultural buildings which are stated to be connected with pig farming and pig production. Precise distances were not provided in the evidence, but the subject property is located towards the north western part of a substantial field owned by the appellant which runs up to and which abuts the closest of the buildings on the adjacent site connected with the pig farming. The photographs produced by the appellant purport to show a number of holes burrowed at the base of a rubble field boundary wall, which holes, the appellant states, are caused by rats burrowing at the base of the wall which forms effectively, so the appellant explained, the external boundary wall to the field across from which the subject property is located.
7. The tribunal heard evidence from the appellant concerning his specific issues of concern in regard to noise, smells, presence of vermin and flies. The appellant stated that he had lived at this location for approximately 20 years firstly in an older house and then that had been demolished and the subject property had been constructed as a replacement dwelling. The appellant's evidence was that pig farming had been conducted by his neighbour for some years at the adjacent rural site at a relatively modest level, but that the extent and degree of this pig farming had been increasing over the years and that for the last five years or so there been a significant problem as the level of pig production had substantially escalated.
8. The appellant's evidence was that he had made a complaint to his local Environmental Health Department approximately 2 years before about the nuisance and smells and other issues, as he saw these, but that he had heard nothing further since then. For the respondent, Mr Martin indicated that recent contact had been made with the Environmental Health Department who had confirmed no record of any complaint ever having been received from the appellant. The appellant's further

evidence was that there was a persistent and unpleasant smell or odour emanating from the pig farming operation. He was a little uncertain as to whether or not this was worse depending upon the direction of the prevailing wind. The appellant described how the windows of the subject property had to be kept closed at almost all times and that washing could not be put outside to dry on a clothesline for approximately the last three years and how a tumble dryer only was used. He described large flies, like “bluebottles”, being very prevalent in the vicinity and in the interior of the subject property and that this was worse at the warmer times of the year. When questioned by the tribunal as to whether or not he had ever observed vermin or rats inside or in the immediate external vicinity of the subject property, the appellant indicated that he had not done so, but he stated that he was sure that that would eventually occur due to the evidence of the vermin from the boundary wall adjacent to the pig farm. The appellant described his property, currently, as “virtually unsellable”.

9. On behalf of the respondent, Mr Martin’s evidence was that the property had been inspected on two occasions and that on both of these occasions no significant smells or evidence of flies had been apparent. It was however to be expected, in such a rural location, that there would be some “normal” smells such as would be normally encountered, but that there was nothing particularly adverse or unusual affecting the subject property, as far as could be observed from his visits on these occasions. No evidence of vermin had been observed adversely affecting the subject property and, once again, the nature of the rural location had to be taken into account in terms of rural wildlife. An allowance of £20,000 had indeed been afforded, which it was submitted was quite fair and reasonable, properly to take account of the location of the subject property, thereby reducing the capital valuation to the figure of £160,000.

THE TRIBUNAL’S DETERMINATION OF THE ISSUES

10. The appellant has not sought to challenge the unadjusted capital value ascribed to the subject property nor the identification of comparables in arriving at that assessment. The appellant has thus confirmed that, were it not for the proximity of the pig farming operation and the adverse factors stated to be emanating from that, no appeal would have been made. The focus of this decision is therefore entirely directed to the evidence of any adverse effect of this pig farming operation upon the assessed capital valuation of the subject property, as revised. It is submitted by the appellant that there should be a further substantial reduction in capital value, so as to bring the figure to £130,000. The appellant maintained that the subject property was, as he put it, “virtually unsellable”. For the respondent, it was contended that the subject property was no more adversely affected in extent or degree than had been already taken into account in ascribing the capital valuation of £160,000. The written submission contained within the Commissioner’s Presentation of Evidence mentions the general approach which has earlier been accepted by the Northern Ireland Valuation Tribunal in the case of *Fiona Redmond v Commissioner of Valuation [NIVT 28/11]* in which case the Tribunal had indeed reduced the capital value by around 20% on the basis that adverse environmental factors were, “very significant and towards the upper part of any notional scale” (of allowance). In the Presentation of Evidence it was submitted that, based upon inspection and information available, the level of environmental nuisance in the present case would not be anything like the situation prevailing in *Redmond*. It was also argued that none of the other properties

located upon this part of the Carrigenagh Road were the recipients of any reduction in capital value due to any nuisance factors caused by the pig farm and it was stated that indeed there was a new-build dwelling nearing completion close to the subject property, the existence of which latter fact would detract from the appellant's suggestion that the subject property was virtually unsellable and that no one accordingly wished to live at this location.

11. In this case the tribunal is required to take account of the statutory capital valuation regime which applies to the rating of domestic properties. The tribunal is required to take account of any material facts to be derived from the evidence in the case. The tribunal notes, specifically, the statutory presumption contained within the 1977 Order, Article 54(3), on account of which any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct, until the contrary is shown. The tribunal must determine therefore whether or not the appellant has successfully challenged and displaced that statutory presumption of correctness.
12. The relevant provisions specify that the capital value of the subject property shall be the amount which (on the statutory assumptions) the property 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. The tribunal thus gave full consideration to all of the evidence and also the tribunal fully considered the submissions and arguments advanced in the case. The matter is to be adjudged at the point in time when the Commissioner's Decision was issued against which this appeal lies.
13. Examining all of the material facts to be derived from the evidence, the tribunal's considered and concluded view and determination is that the appellant has not made out a sufficiently persuasive or strong case so as to displace the correctness of the capital value of £160,000 attributed to the subject property. There is no cogent and persuasive evidence of sufficient weight that the subject property is adversely affected by any of the factors raised in this appeal by the appellant to the necessary degree or extent that the allowance which has already been afforded (£20,000) might properly be viewed as insufficient. For this reason the appeal cannot succeed and, by unanimous decision, the appellant's appeal is dismissed by the tribunal.

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

Date decision recorded in register and issued to parties: