

NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: 33/13

TREVOR & JULIE SMYTH – APPELLANTS

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Michael Flanigan

Members: Mr Philip Murphy and Mr Alan Martin

Belfast, 27th November 2014

DECISION

Decision and Reasons

1. The Appellants and the Respondent appeared and both parties relied upon their written and oral submissions.
2. The subject property (“the property”) in this appeal is situated at 86 Ballydonaghy Road, Dundrod, Crumlin. The property is owned and occupied by the Appellants. The property is a detached cottage renovated and substantially extended by the Appellants.
3. The Appellants submitted an appeal against a capital valuation of £210,000.
4. In addition to submissions from the parties, the Tribunal received copies of the following additional documents:

Substantial extracts from a MAS Environmental Report on Noise Nuisance commissioned by both Antrim Borough Council and Lisburn City Council.

Copy Letter from Antrim Borough Council to the Appellants dated 14th January 2005 setting out the council restrictions on the use of the Nutts Corner Motor Sports Centre.

Copy Noise Nuisance Abatement Notice dated 26th August 2010 Antrim Borough Council to Nutts Corner Circuit Ltd.

5. The Law

5.1 The statutory provisions are set out in the Rates (Northern Ireland) Order 1977 (“the 1977 Order”) as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”)

5.2 The Tribunal considered the terms of the Schedule 12 of the 1977 Order as amended which states as follows:

7.1 Subject to the provisions of this Schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which on the assumptions mentioned in paragraphs 9 to 15, the hereditament 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.

7.2 In estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised.

5.3 Article 54 (3) of the 1977 Order provides that on appeal any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.

6. The Evidence and Submissions.

6.1 The appellants submitted three grounds for appeal:

6.2 That the proximity of the Nutts Corner Race Circuit to the property had a significant environmental impact upon the capital valuation of the property.

6.3 That the property should not have been valued by reference to adjacent properties (70 and 72 Ballydonaghly Road Dundrod) because they had been built after January 2005 and had themselves been valued by reference to the subject property.

- 6.4 That the property should be given an allowance for flooding.
- 6.5 In relation to the issue of noise nuisance from the circuit, the appellants gave evidence as to the history of the user of the circuit and the degree of nuisance which it generated. The appellants' evidence was that the circuit has been used for motor sports for many years. Even when it was under the control of Antrim Borough Council it had been the subject of noise complaints which had resulted in the council agreeing to various restrictions in 2005.
- 6.6 In 2008 the circuit was sold to the current owner and the level of user and the problem of nuisance noise increased dramatically. The circuit is used for Karting, motorbike racing and motorcar racing. The circuit is also available for private hire by individuals and groups to race cars. The problem is at its worst between the end of March and October when the circuit is used regularly both at weekends and throughout the week. The evidence of the appellants was that while there was a race calendar available online, the circuit was frequently used outside of race meetings.
- 6.7 The Respondent did not seek to argue that the use of circuit did not have an adverse environmental impact and taking the noise problem into account had provided an allowance of 12.5% against an unadjusted capital valuation of £265,000.
- 6.8 In addition the Respondent had made an allowance of 7.5% to take into account the age of the original cottage part of the property.
- 6.9 The result was that the Respondent had applied a total allowance of 20% resulting in a capital valuation of £210,000 which was now under appeal.

7. Decision of Tribunal

- 7.1 The Tribunal at the hearing of an appeal is empowered to make any decision that the Commissioner might have made, and to make an alteration to the valuation list to give effect to its decision. The work of the Tribunal is however bound by the provisions of Article 54 (3).
- 7.2 The provisions of Article 54 (3) are specific in that "any valuation in the list is deemed to be correct unless proved otherwise". The phrase "any valuation" in this context includes not only the valuation of the property which is the subject of the appeal, but also any other valuations on the list that are relied upon. Undoubtedly this places a substantial onus on an Appellant to prove that the

entry which relates to the property is incorrect. The standard of proof in these proceedings is on the balance of probabilities; and that standard must be satisfied on the basis of evidence submitted to the Tribunal.

- 7.3 In dealing with the instant case the Respondent relied upon his Schedule of Comparisons. The Tribunal does not believe it is necessary to analyse each of the comparables here, but it is sufficient to note that the comparables included hereditaments of similar size and location to the subject premises, with valuations which substantially supported the Respondent's unadjusted valuation of £265,000.
- 7.4 The Appellants raised two substantive grounds which they submitted affected the valuation of the property, in particular the proximity of the Nutts Corner Race Circuit, and flooding. The Appellant had not originally included flooding in their grounds of appeal and their claim was in relation to one incident of flooding in 2008. There had been no reoccurrence of flooding. The Respondent submitted that an isolated incident of flooding should not attract an allowance. The Tribunal accepts the Respondent's submission and makes no allowance for flooding.
- 7.5 The remaining ground of appeal is that of noise nuisance from the race circuit. The owners of the circuit are the subject of Noise Abatement proceedings from both Lisburn City Council and Antrim Borough Council and those proceedings are currently before the courts. The Tribunal makes no finding in respect of those proceedings which are the subject of very different tests from those which the Tribunal must apply. The Respondent quite fairly and properly did not seek to argue that the property be given no allowance for the environmental impact of noise from the circuit. The property had been given an allowance for nuisance in the sum of 12.5% to reflect the impact of the circuit on the value of the property.
- 7.6 The issue for the Tribunal was whether that allowance adequately took into account the environmental impact on the capital value of the property from the racing circuit.
- 7.7 No two cases of environmental problems are the same and it is difficult to compare one type of nuisance against another. Complaints can involve a wide range of matters including, smells, dirt, dust, pollution, vermin, birds, traffic, litter and noise. The practice is to provide for an allowance against the unadjusted

capital value. In the case of Wilson (24/12 NIVT) the Tribunal made an allowance of 30% which was expressed to be at “the upper end of the notional scale of severity”. The most extreme cases of environmental impact are those which involve a range of issues which are present all of the time. In Redmond (28/11 NIVT), which the Respondent sought to rely on, the Tribunal made an allowance of 20% for the adverse impact of environmental matters.

- 7.8 The Tribunal finds that the property is affected by a single item of complaint, noise. The Appellants accepted as they would have to, that it is not a constant. There were times of the year and days of the week when the circuit was not used at all. The Appellants’ evidence was that even its unpredictability was part of the problem. Social events at home including family occasions had on occasions been ruined by an unexpected impromptu car or motorbike race.
- 7.9 The Tribunal was satisfied that environmental problems from the circuit had increased significantly since 2008. The Tribunal held that the environmental impact of noise on the property was higher than 12.5% and that the correct allowance for it should be 20%. This together with 7.5% for the age of the cottage resulted in total allowances of 27.5%.
8. The Tribunal applied a total allowance of 27.5% to the unadjusted capital valuation of £265,000 resulting in a capital valuation of £192,125 rounded down to £192,000.
9. The tribunal’s unanimous decision is that the appeal is successful and that the entry of this property in the valuation list be amended to £192,000.

Chairman: Michael Flanigan



11th December 2014