

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: 33/21

EKATERINA USENKO - APPELLANT

AND

**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND -
RESPONDENT**

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr C Kenton FRICS and Mrs N Wright

Hearing: 17 January 2022, Belfast

DECISION

The unanimous decision of the Tribunal is that the appeal is dismissed.

REASONS

Introduction

1. This appeal consists of 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) appealed against the decision of the Commissioner of Valuation in a Valuation Certificate dated 6 July 2021 in respect of the capital valuation of a hereditament situated at number 12 Carney Hall, Drumcashellone, Newry BT34 1GB ("the property").
2. The appellant, in making her appeal, indicated that she was content to have the appeal disposed of by written representations. The Tribunal sat to hear the matter on 17 January 2022.

The Law

3. The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). As is now the case in all determinations of this nature, the Tribunal does not intend in this decision fully to set out the detail of the statutory provisions of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, for the reason that these provisions have been fully set out in many previous decisions of this Tribunal, readily available. All relevant statutory provisions and principles were fully considered by the Tribunal in arriving at its decision in the matter. Antecedent Valuation Date or "AVD" is the date to which reference is made for the assessment of Capital Values in the Valuation List. Until a further domestic property revaluation occurs, Capital Values are, under the present statutory regime, notionally assessed as at 1 January 2005, that being the AVD for the purposes of the domestic rating scheme. The legislation, at Schedule 12, paragraph 7, of the 1977 Order, as amended, provides that the Capital Value of a hereditament shall be the amount which, on the assumptions mentioned (materially in paragraphs 11 and 12 of Schedule 12, referred to below), 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. The relevant paragraphs of Schedule 12 include the following statutory assumptions, which provide that:–

- the hereditament is sold free from any rentcharge or other incumbrance;
- the hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality; and
- the hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

The Issue to be Determined and the Evidence

4. The primary issue in this case is set out in the appellant's brief stated grounds of appeal. These grounds are perhaps worth setting out in full, as these appear in the appeal form. The appellant thus states as follows:

“THERE IS NOT FAIR DIFFERENCE IN RATES FOR THE APARTMENT AND A HOUSE IN THE SAME ESTATE. FOR EXAMPLE, THE CURRENT CAPITAL VALUE OF 127 CARNEY HALL, NEWRY BT34 1GA IS £115,000.00 BUT THIS IS THREE BEDROOM HOUSE WITH GARDEN. I CANNOT BELIEVE THAT THE CV OF THE APARTMENT CAN BE HIGHER THAN THE HOUSE.”

As the appellant has not sought to add any further submission or further detail to the foregoing, the issue for determination in this appeal is a relatively simple one concerning the appellant's challenge made to the correctness of the Capital Value assessment. For this reason, the single issue for determination by the Tribunal in this appeal is whether or not that assessment of Capital Value concerning the property is correct or if it is in any way flawed or incorrect and whether or not it consequently may be displaced.

5. The Tribunal had before it the appellant's Notice of Appeal to the Tribunal (Form 3) received 29 July 2021 and documents provided included the following:-
 - The Valuation Certificate dated 6 July 2021 and signed by the Commissioner of Valuation, stating the Capital Value in respect of the property to be £125,000.

- A document dated 20 October 2021 entitled "Presentation of Evidence" prepared on behalf of the Commissioner, as respondent, by Mr Gerard Fitzpatrick MRICS and submitted to the Tribunal.
- Copies of various communications to and from the Tribunal with the appellant and on behalf of the respondent.

6. The property has been further described in Mr Fitzpatrick's Presentation of Evidence. It appears from the documentation that the appellant does not take issue with the details provided in this document as far as the condition and characteristics of the property are concerned and, as mentioned, the fundamental challenge in this appeal is whether the Capital Value accorded to the property is correct. What is therefore not in issue is that the property is a purpose-built first-floor apartment located within Carney Hall, a housing development situated approximately 1.5 miles north of Newry City centre. There are a total of eight apartments within the (Carney Hall) estate together with a number of post-1990 detached, semi-detached and terraced properties, which were all constructed between 2002 and 2006. The property has a Net Internal Area (NIA) of 60.82 m² and the apartment building is of masonry construction with a tiled roof. The Presentation of Evidence includes external photographs of the property. The use of NIA as a means of measurement is customarily employed for Capital Valuation purposes in respect of apartment dwellings, as opposed to the customary use of Gross External Area (GEA) for non-apartment dwellings. Again, no specific issue has been taken in respect of this method of assessment by the appellant.
7. The material rating history concerning the property is relatively straightforward and is set out in the Presentation of Evidence as follows:-

5 February 2021: the appellant submitted an application to the District Valuer challenging the Capital Value of the property. A decision of no change to the existing Capital Value figure of £125,000 was issued on 27 May 2021.

22 June 2021: the appellant appealed the decision of the District Valuer to the Commissioner of Valuation. A decision of no change was issued on 6 July 2021.

3 August 2021: the appellant submitted an appeal to the Northern Ireland Valuation Tribunal.

8. The Tribunal has above set out the contentions of the appellant as comprised in her Form of Appeal. The appellant has not sought to add to these contentions, nor to respond specifically to any of the content of the Presentation of Evidence and to any arguments advanced on behalf of the respondent therein.

9. On behalf of the respondent, the Presentation of Evidence sets out a statement of the respondent's position in respect of this appeal. The respondent's contention is that the valuation in respect of the property has been assessed in accordance with the statutory provisions. These include Schedule 12, Paragraph 7 of the 1977 Order which provides that (on the applicable assumptions) the Capital Value is the amount which 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. The relevant Capital Valuation Date is 1 January 2005, otherwise known as the "Antecedent Valuation Date" or "AVD". This important date is referred to further below. The statutory assumptions are provided for in the paragraphs 9 to 15 of Schedule 12. It is noted that the appellant has not sought to challenge any of these statutory provisions and their applicability to the property save to state that the Capital Valuation, as she seeks to contend, is excessive and the appellant has briefly set out her reasons for this contention.

10. The Tribunal's task is therefore to consider any relevant evidence concerning potentially comparable properties, being those set forth in the Appendix to the Presentation of Evidence. The Tribunal also is required to consider the respective positions in regard to the suitability of these as proper comparators. The Presentation of Evidence, as is customary, includes some colour photographs of the exterior of the property and summary details of the property and also brief particulars, including photographs, of five other properties which are stated to be comparable to the property (thus any evidence regarding six properties in total requires to be considered). Accordingly, the Tribunal has carefully considered any evidential material available.

11. The respondent's submitted comparables as set out in the first Appendix to the Presentation of Evidence. The second Appendix provides helpful locational information. All of these following are presumed to have unchallenged capital valuations (for it would have been stated if any such were to be under challenge). In the first Appendix photographs and particulars of the following additional five properties, with brief material particulars are provided:-

11 Carney Hall, Newry BT34 1GA. Purpose-built apartment; built 2002; Level: 1st floor; NIA 60.8 m²; Location: suburban; Ward: St Patrick's. The Capital Value is £125,000.

9 Carney Hall, Newry BT34 1GA. Purpose-built apartment; built 2004; Level: ground floor; NIA 60.8 m²; Location: suburban; Ward: St Patrick's. The Capital Value is £125,000.

5 Carney Hall, Newry BT34 1GA. Purpose-built apartment; built 2004; Level: 1st floor; NIA 63.00 m²; Location: suburban; Ward: St Patrick's. The Capital Value is £125,000.

2 Ashgrove Hall, Newry BT34 1UA. Purpose-built apartment; built 2007; Level: ground floor; NIA 74.6 m²; Location: suburban; Ward: Damolly (located about 1 mile away). The Capital Value is £150,000.

4 Ashgrove Hall, Newry BT34 1UA. Purpose-built apartment; built 2003; Level: 1st floor; NIA 74.6 m²; Location: suburban; Ward: Damolly (located about 1 mile away). The Capital Value is £150,000.

The Submissions

12. In advancing her arguments, the appellant has not specifically responded to any evidence provided by the foregoing list of properties located at Carney Hall or Ashgrove Hall, Newry. She has however alluded to a property numbered 127 Carney Hall, Newry BT34 1GA with a stated Capital Value of £115,000.00, this being, she states, a three-bedroomed house with a garden. She states that she cannot believe that the Capital Value of an apartment can be higher than that of a house.
13. In the opinion/comments section of the Presentation of Evidence Mr Fitzpatrick states that he has spoken with the appellant on the telephone,

where she has confirmed that she is content with the existing survey data recorded by LPS. He records that the appellant's issue (this being confirmed by her in her Form of Appeal) is the fact that the Capital Value of the subject apartment is higher than some houses located within the Carney Hall development. The appellant has specifically referred to 127 Carney Hall. The Presentation of Evidence states that this latter is a post-1990 semi-detached house, with a GEA of 112.4 m². The Presentation of Evidence continues with the statement that there are a total of eight purpose-built apartments within Carney Hall. Four of these are ground floor level apartments and the remaining four are located at first-floor level. All eight have a NIA of between 60.8 m² and 65.5 m² and all of the apartments have been assessed with the Capital Value of £125,000. Outside of Carney Hall it is Mr Fitzpatrick's opinion that the best comparisons are numbers 2 and 4 Ashgrove Hall. Number 4 Ashgrove Hall is stated to be a first-floor purpose-built apartment, which has a NIA of 74.6 m² and the Capital Value has been assessed at £150,000. None of the foregoing detail has been challenged by the appellant. Having taken into consideration the Capital Values of the other seven apartments within Carney Hall and the additional comparables within Ashgrove Hall, it is the view expressed on behalf of the respondent that the current assessments of Capital Values are fair and reasonable.

The Tribunal's Determination of the Issues

14. Any comparison must relate to values as at AVD, 1 January 2005. In respect of any property under consideration in this appeal which was not in existence as at AVD, values have to be projected based on any evidence available. The proper task of the District Valuer in those circumstances, which indeed are relatively common, is to project, using the comparison method, a Capital Value unto the property as at AVD, and likewise with any properties used as comparisons.
15. Having considered all of the evidence, and whether or not the property was, in broad terms, "in tone" (explained below), the Tribunal's considered assessment is that there appears to be very useful evidence available from these three additional Carney Hall properties, being numbers 11, 9 and 5 Carney Hall, Newry, as listed in the Appendix, of an entirely consistent and specific Capital Value applicable to the properties of the same habitable space located in the immediate vicinity of the property. The evidence available from the other two properties alluded to, being numbers 2 and 4 Ashgrove Hall, Newry, serves to reinforce the correctness of the Capital Value ascribed to the property. The Tribunal does not accept the argument

that in some way the evidence available from these scheduled properties set out in the Appendix to the Presentation of Evidence can be supplanted by any evidence available concerning number 127 Carney Hall, for the reason that this is a property in different circumstances. An essential principle in rating law and procedure is that a comparative method of valuation is used to establish a settled “tone of the list”, as it is referred to, in valuing hereditaments which share, as near as possible, common characteristics and circumstances.

16. A helpful explanation of this latter concept was very recently set out by the Tribunal in the case of **Kevin Black v Commissioner of Valuation NIVT 5/20. (21 September 2021)** at paragraphs 6 and 7 thus:

*“6. This is what valuers know as the “tone of the list” or the “tone of the comparables”. What this means in practice is that if within a relatively short period of time in a particular area (which in an urban setting, might well stretch only to one street, but in a rural setting may stretch to many miles) there are no or limited challenges to a number of valuations or, if challenges are abandoned or ultimately unsuccessful, then a point can be reached within a relatively short space of time although it would have to be said that a reliable tone of the list for the hereditaments (basically the buildings) in a location or category has been settled - see **A-Wear Limited –v- Commissioner of Valuation VR/3/2001.***

7. Whilst the presumption, as it pertains to the tone of the list, is not to be followed slavishly, if it can be established to the Tribunal’s satisfaction that the tone has settled and has been settled for a considerable period of time (measured in years not months) then the prospects of displacing the presumption are significantly diminished.”

17. On this basis, Tribunal notes a consistency in the evidence between the property and scheduled comparables which, does not in any manner suggest that the Capital Value of £125,000 for the property is incorrect or “out of tone”.
18. As the Tribunal has often observed, there is a statutory presumption contained within the 1977 Order, at Article 54(3). Because of this, any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown. In order to succeed in an

appeal to the Tribunal, any appellant must either successfully challenge and displace that statutory presumption of correctness or perhaps the Commissioner's decision on appeal, objectively viewed, must be seen by the Tribunal to be so incorrect that the statutory presumption must be displaced and the Tribunal must adjust the Capital Value to an appropriate figure. The Tribunal, in assessing this appeal, saw nothing in the general approach taken to suggest that this has been approached for assessment in anything other than the prescribed manner, as provided for in Schedule 12 of the 1977 Order. This being so, the Tribunal examined the essential issue of whether or not the appellant had put forward sufficient challenge to the respondent's schedule of comparables and sufficient evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation.

19. Having carefully considered the evidence and arguments advanced, the Tribunal's unanimous decision is that the appellant has not effectively displaced the statutory presumption of correctness in respect of the Capital Value applied to the property and there is no reason, otherwise, for the appeal to succeed. Accordingly, the appeal is dismissed.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 08 February 2022

