

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**RATES (NORTHERN IRELAND) ORDER 1977**  
**IN THE MATTER OF AN APPEAL**  
**VR/15/2011**

**BETWEEN**

**ELIAS ALTRINCHAM PROPERTIES – APPELLANT**

**AND**

**THE COMMISSIONER OF VALUATION – RESPONDENT**

**Re: Units B & C, 5 Hillmans Way, Belfast**

**PART 2 - COSTS**

**Lands Tribunal – Henry Spence MRICS Dip Rating IRRV (Hons)**

**Background**

1. This appeal concerned the net annual value (“NAV”) for rating purposes of a hereditament known as Units B & C, 5 Hillmans Way, Coleraine (“the reference property”). Mr Elias, on behalf of Elias Altrincham Properties (“the appellant”), had suggested that the NAV of the reference property should be reduced from £96,000 to about £50,000. Mr Stephen Shaw QC, on behalf of the Commissioner of Valuation (“the respondent”), considered that there should be no change to the NAV.
  
2. There were two principal issues raised by the appellant in his evidence to the Tribunal:
  - i. Whether or not there were potentially helpful comparables in the Valuation List because the appellant considered there were none in the “same state and circumstances” as the reference property.
  - ii. Whether the NAV’s of any such comparables were correct.

The appellant suggested that if these questions were answered correctly, the 'tone of the list' rule, which formed the basis of the respondent's assessment of the NAV of the reference property, would not apply.

3. Having heard all of the evidence the Tribunal concluded:- "Mr Elias has not shown that the comparables in the List on which the Commissioner relied were not comparables or that their assessments were incorrect. The tone of the list rule does apply. The statutory assumption that the valuation shown in the valuation list shall be deemed to be correct has not been displaced. The appeal is refused."

### **Procedural Matters**

4. Ms Emma Haughey from the Departmental Solicitor's Office ("DSO") had written to the Tribunal seeking the respondent's costs in the reference. The Tribunal wrote to the appellant on several occasions inviting him to comment on the respondents request for its costs, but he failed to respond to any of the Tribunal's communications.

### **Statute**

5. Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976 provides:

"33.-(1) Except in so far as section 5(1), (2) or (3) of the Acquisition of Land (Assessment of Compensation) Act 1919 applies and subject to paragraph (3) (taxation) the costs of and incidental to any proceedings shall be in the discretion of the Tribunal, or the President in matters within his jurisdiction as President.

(2) If the Tribunal orders that the costs of a party to the proceedings shall be paid by another party thereto, the Tribunal may settle the amount of the costs by fixing a lump sum or may direct that the costs shall be taxed by the registrar on a scale specified by the Tribunal, being a scale of costs for the time being prescribed by rules of court or by county court rules."

### **Discussion re the Allocation of Costs**

6. The respondent's submission was that that the Tribunal should follow the general principle, costs follow the event, that is the successful party should receive its costs unless there were special circumstances in which to depart from that general principle. It was the respondent's opinion that there were no special circumstances in the subject reference to depart from the general principle.
7. The Tribunal referred the parties to Oxfam v Earl & Ors (BT/3/1995) and in particular had requested submissions on whether the subject reference fell in to the category of "no fault or principle" litigation, as outlined in that case.
8. On that issue the respondent contended that, in the original hearing, the appellant had sought to challenge the proper interpretation of the phrase "in the same state and circumstances" and the application of the tone of the list rule. Ms Haughey considered that the subject reference was not simply concerned with assessing the correct NAV of the reference property, based on the evidence of valuation experts. Rather she submitted that the Tribunal had been asked to consider the proper interpretation and application of the relevant legislation, the outcome of which could have had a much wider impact than the subject reference.
9. The appellant did not provide any submissions on the issue of whether the subject reference fell in to the category of "no fault or principle" legislation.
10. The Tribunal agrees with the respondent, this was not a simple valuation case. The appellant had sought to challenge the interpretation of the phrase "in the same state and circumstances", as outlined in paragraph 2.-(1) of Schedule 12 Part 1 to the Rates (Northern Ireland) Order 1977 and the subsequent application of the Tone of the List rule. The Tribunal therefore agrees with the respondent, this was not "no fault or principle" litigation and there were no special circumstances in the subject reference to depart from the general rule that the winner should be awarded its costs.

**Conclusion**

11. The Tribunal orders the appellant to pay the respondent's costs in the reference, such costs to be taxed by the Tribunal in default of agreement.

**ORDERS ACCORDINGLY**

**3<sup>rd</sup> March 2016**

**Henry M Spence MRICS Dip.Rating IRRV (Hons)  
Lands Tribunal for Northern Ireland**