

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/4/2013

BETWEEN

MYLES GEDDIS - APPELLANT

AND

THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Re: Site 5 Stockbridge Lane, Donaghadee

Lands Tribunal - Henry M Spence MRICS Dip.Rating IRRV (Hons)

Background

1. Site 5 Stockbridge Lane comprises a new build detached house extending to some 262 square metres. It is located in a small residential development of six detached dwellings, four of which are occupied as private residences. Site 5 is the subject of this appeal and the final house in the development site 6 is nearing completion.
2. The property was first entered in the Valuation List on 11th December 2012. It was described by the District Valuer as a “show house” with a Net Annual Value (NAV) of £6,800 and occupied by Geddis Developments Limited. At the date of the District Valuer’s certificate the property had been furnished by the developer.
3. This is an appeal against the decision of the Commissioner of Valuation (the Commissioner) to uphold the District Valuers assessment of the property as a “show house”.

Procedural Matters

4. Due to the relatively small amount of rates liability involved the appellant requested that the reference be dealt with by written submissions only. The Commissioner agreed to this request and the Tribunal subsequently received various written submissions from Mr Brian Kennedy on behalf of the appellant and from Miss Collette Harte on behalf of the respondent. Mr Kennedy and Miss Harte are experienced Chartered Surveyors.

Position of the Parties

5. The appellant’s grounds of appeal were “the dwelling in question is not actually being used as a show house for the purposes of marketing other dwellings”.

6. The Commissioner considered that at the date of the District Valuer's certificate all of the evidence pointed to the property being used as a "show house".
7. The parties were agreed that if the property were to be assessed as a "show house" the NAV of £6,800 was not in dispute.

Statutory Framework

8. The provisions governing rating valuations are contained in the Rates (Northern Ireland) Order 1977 ("the Order"). Article 54 allows for appeals to the Lands Tribunal:

"54(1) Any person ... who is aggrieved by the decision of the Commissioner on appeal under Article 51 or by an alteration made by him in the valuation list in consequence of such a decision may appeal to the Lands Tribunal, and the Lands Tribunal may make any decision that the Commissioner might have made and, if any alteration in the valuation list is necessary to give effect to the decision, may direct that the valuation list be altered accordingly."

Article 54 also provides:

"54(2) On an appeal under this Article, the valuation shown in the valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown."

There is therefore a presumption of correctness of the existing valuation list entry and the onus is on the appellant to demonstrate that the list entry is incorrect.

"Hereditament" is defined in the Order:

"... means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in a valuation list."

The basis of valuation is outlined in Article 39:

"39(1) For the purposes of this Order every hereditament shall, except as provided by paragraphs (1A) to (1C), be valued upon an estimate of its net annual value.

(1A) For the purposes of this Order the following hereditaments shall be valued upon an estimate of their capital value—

- (a) any dwelling-house;
- (b) any private garage;
- (c) any private storage premises.

(1B) For the purposes of this Order, every hereditament which, though not a dwelling-house, is used partly for the purposes of a private dwelling shall be valued upon an estimate both of its net annual value and of its capital value.

(1C) For the purposes of paragraphs (1A) and (1B), any hereditament—

(a) which is not in use; and

(b) which the Commissioner or the district valuer considers will, when next in use, fall within any sub-paragraph of paragraph (1A) or within paragraph (1B),

shall be deemed to be in use and to fall within that sub-paragraph of paragraph (1A) or, as the case may be, within paragraph (1B).”

Schedule 5 of the Order defines a dwelling house:

“... ‘dwelling house’ means, subject to paragraphs 2 to 5, a hereditament used wholly for the purposes of a private dwelling; ...”.

Authorities

9. The Tribunal was referred to the following decided authorities:

- i. John Laing and Son v Kingswood Assessment Committee (1949) 1KB All ER 224 (“John Laing”)

This case outlined the four essential ingredients of rateable occupation:

- actual occupation
- exclusive occupation
- beneficial occupation
- occupation for not too transient a period

- ii. Walker (VO) v Ideal Homes Limited RA/1995/347 (“Walker”)

This appeal concerned the rateability of a number of show houses, view houses and sales offices, located in and around the towns of Bedford and Luton. The Lands Tribunal held that the properties should be entered in the local non domestic rating list at agreed values for the following reasons:

- (1) The four ingredients of rateable occupation were satisfied because,
- a. there was clear evidence of the actual occupation and use of the appeal hereditaments since (i) there was no need for the Valuation Officer to show on the material day that visitors were being shown over the show houses as there was evidence of use of the appeal hereditaments as a show

- house, and (ii) the houses were fitted out for that purpose and held available by the ratepayer for inspection by potential purchasers.
 - b. there was no issue raised that the ratepayer company did not have exclusive occupation of the appeal hereditament.
 - c. the designation and use of the appeal hereditaments was of benefit to the ratepayer company since it was clear from evidence that the ability of prospective purchasers to see how a finished home would look with furniture, carpets and curtains.
 - d. The duration of occupation was not the important factor in determining the degree of transience.
- (2) The properties were not domestic as they were not used as private residences at the material date and would not be so used for that purpose unless and until the houses were sold by the ratepayer company, and the use as a show house was not de minimis.

The following quotes from "Walker" are considered relevant to the subject reference:

- "if on the evidence, the Tribunal was satisfied that each hereditament was not wholly used as living accommodation counsel for the Valuation Officer said that was the end of the matter and each appeal hereditament must be treated as non domestic property."

And

"In summary, therefore, I find that the four ingredients of rateable occupation are satisfied. Consequently it is now necessary to determine whether the appeal hereditaments are occupied for domestic purposes or should be entered in the rating list as non domestic hereditaments. I have carefully considered all the evidence and the submissions made by counsel. I consider the issue as to whether the property is domestic turns on whether or not the appeal hereditaments fall within the provisions of s66(1)(a) as being 'used wholly for the purposes of living accommodation'.

I am satisfied from the evidence that the hereditaments are not used wholly for the purposes of living accommodation within the meaning of s66(1)(a).

Indeed it is, I believe, clear, from the statement of agreed facts that the appeal hereditaments were not used as private residences at the material date and

would not be so used for that purpose unless and until the houses were sold by the ratepayer company.”

- iii. The Tribunal was also referred to the Valuation Tribunal for England case of “Jenson”. In “Jenson” the panel noted the Lands Tribunal decision in “Walker” and had particular regard to the following paragraph contained within the “Walker” decision:

“Where a house builder builds a select development of say a dozen executive houses, all of different styles and layouts and proceeds to use of the houses (by advertising and other means), to show prospective purchasers, an example of the quality of the completed houses. This property, although the only one of its type should be assessed as a ‘Show House’.”

The following additional quotes from “Jenson” are also considered relevant:

“14. It (the panel) accepts that Mr Jenson is contending that 4 Kestrel Close was not being used for business purposes and that no office was being run from it. Nevertheless, it is not disputed that during the relevant period there was a sign erected outside the premises which read ‘Welcome to our Show Home’, thus inviting potential purchasers to view the show house which had been furnished or partly furnished to enhance the viewing experience of customers. Furthermore, the word ‘may’ above clearly demonstrated to the panel’s satisfaction that whilst there was no actual sales office/desk at the premises and that the property was unmanned and only available for viewing by appointment with the vendors agent this, in itself, does not preclude the premises from being assessed as a show house open to visitors.

15. The panel agreed with the Valuation Officer’s contention that the house was not in use as a dwelling during the relevant period as it was furnished and used as a show home. It only became a dwelling house when it was let to a tenant at which time it was banded for council tax the property was furnished, there was a sign outside the premises advertising the property as a ‘Show Home’, and the evidence from Mr Williams clearly demonstrated to the panel’s satisfaction that the property was being put to such use during the relevant period.”

The Facts

10. The facts which are relevant to this reference are those pertaining at the date of the District Valuer’s certificate, 11th December 2012 (Marks and Spencer v Commissioner of Valuation [VR/30/1986]). The Tribunal considers the following facts to be of significance:

i. Estate Signage

It was not disputed that there were “show house” signs at the top of the estate and within the estate directing potential purchasers to site 5. Miss Harte considered this to be good evidence that the subject property was being used as a show house. Mr Kennedy submitted that these signs were erected for the purposes of directing viewers away from occupied properties within the estate, as several complaints had been received by the developer. The Tribunal agrees with Miss Harte that prima facie this is good evidence that site 5 was being used as a show house. If the signs were provided solely for the purposes of giving directions would it not have been more appropriate to use “house for sale” or some similar wording?

ii. No 6 Stockbridge Lane

Mr Kennedy had indicated in his factual evidence that site 6 had been completed to a “watertight finish” at the date of District Valuer’s certificate. It was however disputed as to when the property was openly marketed for sale. There was conflicting evidence but it was generally accepted that open marketing did not occur until sometime in early 2013. On that basis Mr Kennedy considered that site 5 could not have been used as a show house as there were no other properties for sale in the estate at the relevant date. Miss Harte considered this to be immaterial. In her opinion the development had not been finished and there was one more property to come on the market. The Tribunal agrees with Miss Harte. It is not relevant that site 6 was not being openly marketed. It is not unusual for show houses to be used to market properties that have not yet been built or completed. The relevant fact was that site 6 was still to come on the market.

iii. Furniture

It was not contested that the ground floor of site 5 and one of the bedrooms had been furnished. This furniture was not subsequently sold with the house. Mr Kennedy submitted that the purpose of the furniture was solely to assist the sale of site 5. He gave evidence that the developer had purchased the furniture sometime in 2004 and had used it to facilitate the sale of several properties since that date. Miss Harte considered the presence of the furniture to be a good indication that the property was occupied for the purposes of a show house. The Tribunal agrees with Miss Harte to some extent in that the presence of the furniture at the relevant date was a good indication that the property was occupied, but for what purpose will be discussed later.

Discussion

11. The directions for deciding if the subject property should be rated as a “show house” are adequately set out in “Walker” and as outlined in that case the issues for this Tribunal are:-
- i. have the four ingredients of rateable occupation been satisfied?
and, if so
 - ii. is the property used wholly for the purposes of a private dwelling?

Rateable Occupation

12. The tenets of rateable occupation are listed previously in “John Laing”. Applying these tenets to the subject reference:

i. Actual Occupation

The Tribunal is satisfied that Geddis Developments Limited were in actual occupation of the subject property at the relevant date. They had installed furniture and the premises were open for viewing to any potential purchasers.

ii. Exclusive Occupation

It was not disputed that Geddis Developments Limited had exclusive occupation of the property.

iii. Beneficial Occupation

The use of the property to allow prospective purchasers to see how a finished house would look facilitated the sale of the subject property and the adjacent unfinished property. This was an obvious benefit to the developer.

iv. Transience

The premises were occupied for viewing from June 2012 up to sale in May 2013. The Tribunal does not therefore consider this degree of occupation to be transient.

On the basis of the above the Tribunal is satisfied that Geddis Developments Limited were in rateable occupation of the subject premises at the relevant date, 11th December 2012.

Used Wholly for the Purpose of a Private Dwelling

13. Article 39 of the Order dictates that all properties should be valued upon an estimate of their Net Annual Value. One of the exceptions, however, is a dwelling house which should be valued upon an estimate of its capital value. Schedule 5 of the Order defines dwelling house as “any premises used wholly for the purposes of a private dwelling”. At the date of the District Valuer’s certificate the Tribunal is satisfied however there was no evidence that the subject property was being used wholly for the purposes of a private dwelling within the meaning of Schedule 5. The Tribunal considers the subject case to be similar to “Jenson” and the estate signage was clear evidence that, at the relevant date, potential purchasers were being invited to view the “show house”. This constituted a commercial use of the premises.

DECISION

14. The Appeal is dismissed.

ORDERS ACCORDINGLY

10th June 2014

Henry M Spence MRICS Dip.Rating IRRV (Hons)

LANDS TRIBUNAL FOR NORTHERN IRELAND