LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

IN THE MATTER OF AN APPEAL AGAINST VALUATION FOR RATING PURPOSES

VR/1/1988

BETWEEN

WALTER D O ROLLINS - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Lands Tribunal for Northern Ireland - The President, Judge R T Rowland QC

Belfast - 23rd May 1988

In this appeal the appellant has sought a reduction in the net annual value of his dwelling house from the figure of £465. On first appeal the Commissioner had, by his decision dated 23rd November 1987, declined to make any alteration in the figure whereupon the appellant appealed to the Tribunal by notice dated 4th January 1988. Although the appeal was some days outside the time limited for appeal no point has been taken and the appeal has been accepted. The grounds of appeal as stated in the notice are:

"Valuation of this property is not consistent with that of neighbours."

The appellant appeared in person and did not file any expert evidence nor did he call an expert witness. Mr Stephen Shaw, of Counsel, appeared for the Commissioner in order, it seems, to put forward some observations on the general policy of the Commissioner in the conduct of such appeals before the Lands Tribunal. I shall refer to these later.

Mr Rollins, who is now 67 years old, had lived in a dwelling house situate at 147 King's Road for some 18 years. This was a fairly large detached house standing in a large garden. It had 4 bedrooms, two reception rooms, a large kitchen with a dining area plus another room used for living and dining purposes. Its net annual value had been increased in 1981 from £292 to £350 for reasons which were not revealed to the Tribunal.

In 1983, or thereabouts, in anticipation of his impending retirement, Mr Rollins considered the possibility of building a new house in the grounds of his existing one and to that end sought, and was granted planning permission. The new house was completed in 1986 and

became No 147B King's Road. It was a chalet bungalow comprising the following accommodation:

On the ground floor, a kitchen with small dining area, sitting room, lounge, dining room, shower room with lavatory, and a utility room. On the first floor two large bedrooms, bathroom, separate lavatory and shower unit. He first occupied it in December 1986; it was first rated in 1987 at a net annual value of £465. He considered that figure was too high compared with his old house, No 147, which was valued at £350.

Having been sworn, Mr Rollins testified to the state and circumstances of both the new house, which is the subject of this appeal, and his old house. In addition, he tendered in evidence photographs of No 147, No 147B, No 147A, No 149 King's Road, No 174 King's Road and No 4 Kingsway Drive. In support of his contention that the valuation of the subject was too high he advanced four points:

(a) When one compares houses in close proximity (which are comparable to the subject) one finds that they are all (including his old house No 147) 4 bedroom houses and all have valuations much less than the subject:-

No 147 - £350 NAV
147A - £325 NAV
149 - £360 NAV
174 - £355 NAV

No 4 Kingsway Drive has a higher valuation at £475 NAV.

(2) The subject, as a new house, is not such a great benefit because the old one had been refurbished and it has all normal amenities including central heating.

(3) The subject is a smaller house and its up-keep is easier.

(4) Housing estates situated nearby and a public house called "The Queen's Inn" (opposite his property) create traffic, noise, disturbance and loss of amenity all of which make his house less valuable.

Cross-examined by Mr Shaw the following points emerged:

(a) He had not measured either the new house or the old one nor had he tried to compare the respective areas.

(b) Admitting to some surprise he nevertheless accepted that the outside measurements showed that the new house was the larger of the two viz:

	New	Old
House	212 sq metres	202 sq metres
Outbuildings	15 sq metres	11 sq metres
Garages	135 sq metres	24 sq metres
Balcony	13 sq metres	-
Sun porch	-	3.6 sq metres
Car Port	-	28 sq metres
	375 sq metres	268 sq metres

Mr Rollins pointed out that the large garage in the new house accounted for much of this difference and could not be compared with the "useful" area of the old.

(c) The shopping centre and housing estate had been there for some years - since 1970 - and could not now be taken as a new factor which would operate to reduce the NAV of any of the properties on this part of King's Road.

(d) The Appeal Valuer, Mr Bronte, had spent a reasonable time discussing the details of the valuation with him and the basis upon which it had been assessed - namely by taking new houses in the vicinity and comparing their valuations with the subject, for example houses in Kensington Park, and No 260 King's Road. At the end of their discussion he agreed that he felt convinced that it would be useless to proceed to appeal. As he put it "he didn't want to waste the time of professional people". Nevertheless having considered the matter further he felt that he would like to put his point to the Lands Tribunal and draw attention to the rather startling difference in the figures. He still felt it was too high.

The Commissioner did not file a statement of case in reply nor did he tender any comparative valuations for the assistance of the Tribunal. Mr Shaw stated that it was customary for the Commissioner to do that especially in cases where the appellant was not professionally represented and had not filed a statement of case nor called expert valuation

evidence. In the present case, however, the Commissioner had decided to observe the rules strictly and in particular the provisions of Rule A10 of the Lands Tribunal Rules 1976 which relieved him of the obligation of serving either a statement of his case or a statement of the statutory particulars in cases in which the appellant had decided not to serve a statement of his case. Mr Shaw reminded the Tribunal of the onus of proof in a valuation appeal under Article 54(2) of the Rates (Northern Ireland) Order 1977 which provides:

"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."

This provision clearly operates to place on an appellant the burden of proving that the valuation as shown in the list is too high. This, he submitted, he can only do by calling evidence or giving evidence himself relating to the valuation of the subject. The valuation, or more accurately, the net annual value of a hereditament is the rental value at which it might be expected to let from year to year on the basis set out in paragraph 1 of Schedule 12 to the 1977 Rates Order. Where the Valuation has been called into question by serving notice of appeal then for the purposes of estimating the net annual value "regard shall be had to the net annual values in the valuation list of comparable hereditaments which are in the same state and circumstances as the hereditament whose net annual value is being revised." See paragraph 2 of Schedule 12 aforesaid. So, Mr Shaw submitted, the appellant must make out a case in the first instance and he must do it by evidence. The procedure to be followed is set out in Rules A9 and A1O of the Lands Tribunal Rules. If an appellant wishes to propound expert valuation evidence he must serve a statement of his case together with a list of comparable hereditaments upon which he intends to rely at the hearing. The Commissioner, in such an event, is obliged to serve a statement of case in reply. If, on the other hand, the appellant does not propose to propound expert valuation evidence he is not obliged to serve a statement of his case no is the Commissioner bound to serve one. On the other hand the appellant <u>may</u> serve a statement of his case including the facts to be proved even though not obliged to do so. In that event:-

"The Commissioner shall within 28 days of the receipt of copies of such statements send to the registrar his reply and a statement of the statutory particulars ....". Rule AlO(2).

In the instant case the appellant has chosen not to serve a statement of his case; he originally submitted that the valuation was too high - because the subject house was smaller in area. He now accepts that the subject house is larger than the old one and that a

new one commands a higher letting value than an old one. Mr Shaw submitted that taking those two factors into account the appellant had not shown that the valuation was too high. On the contrary, the Commissioner had correctly applied the tone of this list by having regard to the valuations of comparable new properties with similar measurements in similar circumstances. The Tribunal accepts that having regard to the state and circumstances of the subject and to the valuations of adjacent properties the valuation has not been shown to be to high. This may have appeared so at first glance on the assumption that a two bedroom house should not command a higher valuation than a four bedroom house even though the two bedroom house is a new one set in the grounds of the old. But once it is established that the new one has the greater area and also the potential to adapt further internal living accommodation out of the existing use then the two cannot be regarded as comparable hereditaments and the onus of proof has not been discharged. The valuation must therefore be confirmed and the appeal dismissed.

Mr Shaw, on behalf of the Commissioner, explained that he wished to comment on the failure of the Commissioner to serve a statement of case or to provide, for the Tribunal's use, particulars of comparable valuations constituting the tone of the list. Normally the Commissioner would assist the Tribunal by providing such particulars even though there was no obligation under the rules to do so. But there had been instances in some recent cases where such particulars had been used against the Commissioner in order to assist the appellant without regard to the onus of proof which lies on the appellant. In such cases there is a danger, where the Commissioner voluntarily tenders as a witness a valuer to explain the basis of the assessment and the evidence which supports it, of cross-examining that witness with a view to bolstering up the appellant's case and at the same time demolishing the valuation which is under appeal. This has caused the Commissioner some concern. As a matter of law, of course, the point is well taken. Where, as in this type of case, there is a clear onus of proof, if the Tribunal finds a gap in the appellant's case (either from lack of reliable and relevant evidence or other reason) it must not strive to fill it. In particular it should not use the Commissioner's evidence to make a case for an appellant who has himself failed to make a prima facie case by cogent and relevant evidence. In such a case the Commissioner's witness, if tendered, should not be cross-examined in order to reduce a valuation which the appellant, by his evidence, has failed to show is prima facie excessive.

Over the years, since the Lands Tribunal was established, the Commissioner has always endeavoured to assist the Tribunal ever when there was no legal obligation upon him to do

so. Now that this matter has been ventilated it is hoped that the practice will continue on the understanding that in appropriate cases the Commissioner's evidence will be received in the spirit in which it is offered. There will be no order as to costs.

ORDERS ACCORDINGLY

28th June 1988 **The President, Judge R T Rowland QC**

Appearances:-

Mr Walter D O Rollins (Personally).

Mr Stephen Shaw of Counsel (instructed by the Crown Solicitor) for the Respondent.