

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
IN THE MATTER OF AN APPEAL
VR/11/1988
BETWEEN
PATRICK McGOWAN - APPELLANT
AND
THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

Londonderry - 22nd August 1988

This appeal concerned the Net Annual Value of £130 assessed on No 33 Slievemore Park, Londonderry. There was no dispute that £130 was and still would be the correct assessment if an outhouse, at the rear of the adjacent house No 34 Slievemore Park, was not used as a shop. That shop had a net area of only 7 square metres and sold general groceries. It opened on 22nd September 1987 and the Appellant applied to the District Valuer on 21st October 1987 for a reduction due to the nuisance caused. The District Valuer by a Certificate dated 29th October 1987 declined to make a change. Following an appeal to the Commissioner of Valuation no change was made giving the reason:- "the valuation is fair and relative to similar hereditaments in the vicinity." It is from that decision this appeal was made.

Mr Patrick Columba McGowan testified that he had made representations to the Northern Ireland Housing Executive, the Planning Division of the Department of the Environment for Northern Ireland and the City Council regarding the nuisance caused by the use as a shop which was unauthorised. He had purchased his house from the Northern Ireland Housing Executive and his lease contains the usual clauses not to carry on any trade manufacture or business or as a shop and not to cause any nuisance or annoyance to the Lessor or its tenants or occupiers of neighbouring premises. The Northern Ireland Housing Executive who were prepared to take action were persuaded by the City Council to stay their hand pending the result of a survey on shopping in the area being carried out by the Department of the Environment for Northern Ireland. The result of that survey was not expected for some time.

Mr McGowan further testified that:-

- (a) there was a high noise level due to traffic to and from the shop;
- (b) the shop opening hours were from 7.15 a.m. to 10.30 p.m;
- (c) the shop was approached by lorries and other vehicles via the cul-de-sac at the rear. This caused a danger to his and other children especially when three-point turns were required to enable vehicles to exit the cul-de-sac. He agreed there was a large grassed area at the front where children could play;
- (d) there was now no privacy to enable his family to sit in his back garden;
- (e) his wife was not well and had to suffer verbal abuse from some customers;
- (f) at lunch break at the nearby St Columb's College, schoolboys queue at the shop to make purchases;
- (g) the shop pays no rates.

However; when it was explained to him that he was mistaken - there was an entry for No 34 Slievemore Park in the Valuation List showing that the house was assessed @ £130; the shop was assessed @ £80; the total valuation is £210 - he withdrew that complaint.

Mr Desmond Ewing Gilfillan A.R.I.C.S. a Grade I Valuer in the Valuation and Lands Office testified that he considered that the present circumstances would not influence the hypothetical tenant to lower his rental bid for the house. Additionally, the hypothetical landlord would not be expected to reduce the rent payable for the house because of the shop on the adjacent premises.

He supported that opinion by reference to:-

1. No 35 Slievemore Park - a house on the other side of the shop at No 34. The Occupier had made application to the District Valuer and a further appeal to the Commissioner of Valuation but had taken no further action and must be considered to be satisfied.

2. No 17 Collon Lane - a house in the same estate adjacent to a house where the outhouse at the rear was also used as a shop. No reduction had been asked for nor given.
3. Houses at Nos 26 and 30 (inclusive) Little Diamond. A caravan used as a shop is in the lay-by in front of the houses. No reduction in any of the houses has been asked for nor given.
4. Nos 42 & 43 Glenowen Park. These are terraced two-storeyed houses with purpose built shops underneath. Assessed at the same Net Annual Value (£150) as other similar two-storeyed houses (in the same estate) but with no such shop underneath.

DECISION

The Tribunal inspected Slievemore Park and all the comparables externally.

The concession by Mr McGowan that a Net Annual Value of £130 is correct if no shop existed next door was fairly and properly made. All the 50 houses (approximately) in this estate are of one type and all are assessed @ £130.

Therefore the only issue is whether any allowance (and if so how much) should be made for the existence of and use of the shop in the adjacent hereditament. The Tribunal understands the desire of the Appellant for what to him is a large annoyance especially as his wife is not well and the Tribunal sympathises. But that cannot be the criterion - the Tribunal must look at a hypothetical tenant coming afresh to the scene and the allowance, if any, he would require in the annual rent he would pay. The best evidence is to be found in the comparables quoted by Mr Gilfillan.

None of those comparables indicated that any allowance had been given because of the existence and use of a shop adjacent. Nor did the Tribunal's inspections show that the Appellant's house was more adversely affected than the comparables. The only conclusion to be drawn is that no allowance can be given to the assessment of No 33 Slievemore Park and therefore the Tribunal makes no change in £130 Net Annual Value.

The Tribunal makes no order as to costs.

ORDERS ACCORDINGLY

21st September 1988

**A L Jacobson FRICS
Lands Tribunal for Northern Ireland**

Appearances:-

Mr Patrick Columba McGowan, the Appellant, by himself.

Mr Desmond Ewing Gilfillan ARICS for the Respondent Commissioner.