

**NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007
CASE REFERENCE NUMBER: NIVT30/15**

**WILLIAM REILLY and CIARA REILLY - APPELLANTS
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND -
RESPONDENT**

Northern Ireland Valuation Tribunal

**Chairman: Alan Reid, LL.B.
Members: Tim Hopkins FRICS and Garry McKenna**

Date : 20th May 2016

DECISION

The unanimous decision of the Tribunal is that the Notice of Decision on Appeal of the Commissioner of Valuation for Northern Ireland in respect of the valuation of the property at 47 Kilhorne Gardens, Belfast BT5 6NT as contained in the Notice of Decision dated 3rd September 2015 is upheld and the Appellants' Appeal is dismissed.

REASONS

1. Introduction

- 1.1 This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order").
- 1.2 By a Notice of Appeal dated 1st October 2015 the Appellants appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland ("the Commissioner") dated 3rd September 2015 in respect of the Valuation of a hereditament situated at 47 Kilhorne Gardens, Belfast BT5 6NT.
- 1.3 The parties to the Appeal had indicated that they were each content that the Appeal be disposed of on the basis of written representations in accordance with Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007 ("the Rules") and accordingly there was no appearance before the Tribunal by or on behalf of any of the parties.

2. The Law

The relevant statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). The statutory provisions regarding the basis for valuation are contained in Article 8 of the 2006 Order which amended Article 39 of the 1977 Order and have been fully set out in numerous previous decisions of this Tribunal. The Tribunal does not therefore intend in this decision to fully set out the statutory provisions of Article 8.

3. The Evidence

The Tribunal heard no oral evidence but had before it copies of various documents including the following:-

- 3.1 Valuation Certificate issued by the Commissioner of Valuation on 3rd September 2015
- 3.2 The Appellants' Notice of Appeal dated 1st October 2015 with four additional pages continuing Section 5 of the Form 3 ("Grounds of Appeal") and photocopies of Agents' brochures relating to 4 Kensington Manor, Belfast BT5 6PE and a development at "The Fairways", Shandon Park, Belfast.
- 3.3 A document entitled "Presentation of Evidence" submitted on behalf of the Commissioner by Sonya McIntyre BCS (Hons) MRICS of Land and Property Services and received by the Tribunal on 3rd March 2016.

All of these documents had been provided to all of the parties who had each been given an opportunity to consider and respond to them before being considered by the Tribunal.

4. The Facts

Based upon the information before it the Tribunal determined, upon the balance of probabilities, the following facts:-

- 4.1 The hereditament is a detached two-storey dwelling constructed post 1990 and is situated at 47 Kilhome Gardens, Knock, Belfast BT5 6NT ("the Subject Property").
- 4.2 The gross external area ("GEA") of the Subject Property is 216 m² with out-buildings of 20 m². The Tribunal understood the Appellants to be the occupiers and rate payers in respect of the property. The Tribunal had no other information regarding the title to the Subject Property nor regarding its physical construction and characteristics save as mentioned in the papers before the Tribunal and referred to herein. The Subject Property is a four bedroomed detached house built around 2014. It is a timber

- framed/brick faced construction with a pitched tile roof and has double-glazing and full central heating.
- 4.3 The Subject Property had originally been entered into the Capital Valuation List with a Capital Value of £245,000.00 and Certificate of Valuation was issued to that effect on 27th July 2015.
- 4.4 On 21st August 2015 the Appellants appealed the District Valuer's decision to the Commissioner of Valuation. Following review, the Commissioner made no change to the Capital Value.
- 4.5.1 In arriving at the Capital Value Assessment figure of £375,000.00, regard was had to the Capital Value Assessments of other properties in the Valuation List considered comparable. These comparables were set out in a Schedule to the "Presentation of Evidence" submitted on behalf of the Commissioner. There were a total of five comparables. Further particulars of those comparables were provided together with photographs of the Subject Property and of all of the comparables.
- 4.5.2 The first comparable put forward on behalf of the Respondent was the property at 49 Kilhome Gardens which was immediately adjacent to the Subject Property. It is a detached dwelling constructed in 2014 with a GEA of 205 m² and out-buildings of 20 m². It is on a similar size site to the Subject Property and also has four bedrooms. It has an unchallenged Capital Value of £375,000.00.
- 4.5.3 The second comparable property put forward on behalf of the Respondent was the property at 12 Kilhome Gardens. Once again this is a detached dwelling built in 2014. It has a GEA of 221 m² and out-buildings of 21 m². It is on a slightly larger site than the Subject Property and has three bedrooms. It has an unchallenged Capital Value of £375,000.00.
- 4.5.4 The third property put forward on behalf of the Respondent as a suitable comparable was 4 Kensington Manor. This property is a detached dwelling built in 1994 with a GEA of 216 m² and out-buildings of 42 m². It is on a similar size site to the Subject Property and has four bedrooms. It has an unchallenged Capital Value of £400,000.00.
- 4.5.5 The fourth comparable put forward on behalf of the Respondent was the property at 7 Kensington Manor, Belfast. It too was built in 1994. It is a detached two-storey dwelling with a GEA of 200 m² and out-buildings of 20 m². It is on a site which is the same size as the Subject Property and has four bedrooms. It has an unchallenged Capital Value of £375,000.00.
- 4.5.6 The final comparable put forward on behalf of the Respondent was the property at 135 Shandon Park, Belfast. It was built in 2014 and is a detached property. It had originally been considered by the Commissioner to be a two-storey dwelling with a GEA of 212 m² and out-buildings of 23 m². It had five bedrooms and a Capital Value of £375,000.00. Following representations made by the Appellant to the effect that this property was in fact a three-storey dwelling, the Respondent had requested a re-inspection of this property and was not seeking to rely upon it in this Appeal.

- 4.6 The Capital Value Assessments of all of the comparable properties were unchallenged save as referred to in this Decision.

5. The Appellants' Submission

The Appellants, in summary, made the following submissions in their Notice of Appeal:-

- 5.1 The Capital Value Assessment of £375,000.00 for the Subject Property was excessive in that it did not represent the amount which the Subject Property might reasonably have been expected to realise if it had been sold on the Open Market by a willing seller on 1st January 2005.
- 5.2 In estimating the Capital Value of the Subject Property for the purposes of the revision of the Valuation List regard was had to Capital Values in that Valuation List of properties which did not constitute comparable hereditaments in the same state and circumstances as the Subject Property and regard was not had to the Capital Values of properties which do constitute comparable hereditaments in the same state and circumstances as the Subject Property.
- 5.3 Certain factors particular to the Subject Property had not been taken into account in circumstances where they should have been taken into account namely –
- 5.3.1 The house is of a timber frame construction which in the Appellant's submission lowers its value;
- 5.3.2 The site upon which the Subject Property is built has a steep gradient downwards towards the house from the road.
- 5.3.3 The site only has provision for one parking space.
- 5.4 One of the comparable properties put forward by the Commissioners at 135 Shandon Park was a much larger property than the Subject Property and was not therefore a property comparable hereditament.
- 5.5 Three of the other comparable properties put forward by the Commissioner namely those at 4 Kensington Manor, 7 Kensington Manor and 12 Kilhorne Gardens, were not properly comparable hereditaments for reasons set out in the Appellants' Notice of Appeal including the parking space available at each, the level sites upon which each were constructed and the fact that they were of standard brick and mortar construction.
- 5.6 Two of the comparables, the properties at 135 Shandon Park and 4 Kensington Manor put forward by the Commissioner had recently been marketed at much higher asking prices than the Subject Property and, whilst accepting that Capital Value and Market Value were not the same thing, the Appellants were of the view that there was a relationship between the two which should "apply consistently across the valuations of properties".
- 5.7 The Appellants further contended that a sounder basis for valuation would be to use older properties in the general area as comparable

hereditaments as, in the opinion of the Appellants, these would have set the tone of the Valuation List in the area.

- 5.8.1. The Appellants submitted a number of properties as potential alternative comparable hereditaments. These were the properties at Nos 8, 10 and 11 Kensington Park, Nos 39, 41, 45 and 122 Kensington Road, No 9 Kensington Gardens, No 2 Kensington Gardens South and No 31 Kilhorne Gardens. The Appellants provided information with regard to the characteristics and Capital Values of these properties which the Tribunal has considered in reaching its decision.
- 5.8.2. 8 Kensington Park has a GEA of 212 m² and out-buildings of 25 m². It is located on a similar size site to the Subject Property and has five bedrooms. The Appellants contended that it was a detached property but the Respondent contended that it was semi-detached and had been constructed between 1918 and 1939. It had an unchallenged Capital Value of £330,000.00.
- 5.8.3. 10 Kensington Park has a GEA of 242 m² and ancillary buildings of 18 m². It is built on a similar size site to the Subject Property and has four bedrooms. It has an unchallenged Capital Value of £335,000.00. The Appellants submitted that it was a detached property but the Respondent's submission was that it was a semi-detached property constructed between 1918 and 1939.
- 5.8.4. 11 Kensington Park is a semi-detached two-storey dwelling with a GEA of 273 m², ancillary buildings of 31 m² and a garage of 17 m². It is built on a similar size site to the Subject Property and has six bedrooms. It has an unchallenged Capital Value of £350,000.00. It was constructed between 1918 and 1939.
- 5.8.5. 39 Kensington Road, Belfast is a detached dwelling with a GEA of 235 m² and out-buildings of 21 m². It is located on a 0.3 acre site and has four bedrooms. It has an unchallenged Capital Value of £300,000.00. This property is a detached bungalow constructed between 1946 and 1965.
- 5.8.6. 41 Kensington Road is a semi-detached two-storey dwelling with a GEA of 202 m². It is built on a similar size site to the Subject Property and has five bedrooms. It was constructed before 1919 and has an unchallenged Capital Value of £310,000.00.
- 5.8.7. 45 Kensington Road was described by the Appellant as a detached property. In the Respondent's submission it is a semi-detached property. It has a GEA of 237 m² with out-buildings of 18 m². It is located on a similar size site to the Subject Property and has five bedrooms. It has an unchallenged Capital Value of £325,000.00. The dwelling was constructed between 1918 and 1939.
- 5.8.8. 122 Kensington Road is a semi-detached dwelling with a GEA of 202 m², ancillary accommodation of 11.69 m² and out-buildings of 19 m². It is located on a 0.17 acre site and has five bedrooms. It is constructed between 1918 and 1939 and has an unchallenged Capital Value of £300,000.00.

- 5.8.9. 9 Kensington Gardens is a detached two-storey dwelling with a GEA of 204 m² and out-buildings of 13 m². It is located on a 0.14 acre site and has five bedrooms. It has an unchallenged Capital Value of £350,000.00. It was constructed before 1919.
- 5.8.10 2 Kensington Gardens is a detached dwelling with a GEA of 209 m² and out-buildings of 11 m² constructed on a 0.06 acre site. It has four bedrooms. It has an unchallenged Capital Value of £350,000.00 and was constructed between 1918 and 1939.
- 5.8.11 Finally, 31 Kilhorne Gardens is a detached dwelling with a GEA of 189 m² and out-buildings of 24 m². It is located on a similar size site to the Subject Property and has four bedrooms and unchallenged Capital Value of £300,000.00. It was constructed between 1946 and 1965.
- 5.9. The Appellants were of the view that the correct Capital Value of the Subject Property was between £300,000.00 and £330,000.00.

6.The Respondent's Submissions

In summary, the following submissions were made on behalf of the Commissioner -

- 6.1 The Capital Value Assessment of the Subject Property had been carried out in accordance with the legislation contained in the 1977 Order. In particular as required by Schedule 12 of the 1977 Order regard was had to the Capital Values of other properties in the Valuation List.
- 6.2 The Respondent's "preferred" comparable hereditament was the property at No 49 Kilhorne Gardens situate immediately adjacent to the Subject Property. It was slightly smaller property than the Subject Property with a GEA of 205 m² but like the Subject Property was situated on a similar size site and had four bedrooms and similar out-buildings. It had a Capital Value of £375,000.00 which had been the subject of an Appeal to the Commissioner of Valuation which the Commissioner had declined. The Respondent also pointed out that 49 Kilhorne Gardens was constructed using the same construction techniques as the Subject Property.
- 6.3 The Respondent was of the view that the site upon which the Subject Property was located had only a gently sloping gradient and accepted that there was provision for one car parking space but felt that the comparables put forward by the Respondent were all based upon similar sized sites and no allowances had been made to reflect differing arrangements between the areas to the front or rear of any of those properties.
- 6.4 The Respondent contended that having regard to the other Capital Values of properties in the Valuation List the Capital Value of £375,000.00 assessed for the Subject Property should remain unchanged.

7. The Tribunal's Decision

- 7.1 Article 54 of the 1977 Order enables a person to appeal to the Tribunal against the decision of the Commissioner on appeal as to Capital Value. In this case the Capital Value for the Subject Property has been assessed at the AVD at a figure of £375,000.00. On behalf of the Commissioner it has been contended that that figure is fair and reasonable when compared to other properties. The statutory basis for valuation has been referred to and, in particular, reference has been made to Schedule 12 to the 1977 Order in arriving at that assessment.
- 7.2 The Tribunal must begin its task by taking account of an important statutory presumption contained within the 1977 Order. Article 54(3) of the 1977 Order provides: *"On an appeal under this Article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown"*. The onus is therefore upon the Appellants in any case to challenge and to displace that presumption, or perhaps for the Commissioner's decision on appeal to be seen to be so manifestly incorrect that the Tribunal must take steps to rectify the situation.
- 7.3 In this case the Tribunal saw nothing in the approach adopted to achieve the initial assessment as to Capital Value nor in the decision of the Commissioner on Appeal to suggest that the matter had been assessed on anything other than the prescribed manner provided for in Schedule 12, paragraphs 7 (and following) of the 1977 Order. The statutory mechanism has been expressly referred to in the Commissioner's submissions to the Tribunal and the Tribunal noted the evidence submitted as to comparables. The Tribunal accordingly concludes that the correct statutory approach has been followed in this case in assessing the Capital Value.
- 7.4 The Tribunal then turns to consider whether the evidence put before it or the arguments made by the Appellants are sufficient to displace the statutory presumption. Those arguments have been summarised above.
- 7.5 Schedule 12 of the 1977 Order requires that in assessing the amount which the Subject Property might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant AVD (in this case 1st January 2005) regard must be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances. The Respondent has put forward a number of comparable hereditaments the details of which are referred to above.
- 7.6 Having carefully considered the submissions of both parties the Tribunal is satisfied on the balance of probabilities that the gradient of the site upon which the Subject Property is located, the amount of car parking space available at the Subject Property and the method of construction of the Subject Property are not factors which materially distinguish the Subject

Property from any of the properties put forward by either of the parties to this Appeal as suggested comparable hereditaments.

- 7.7 The Tribunal has carefully considered the details and characteristics of all of the properties put forward by the parties as suggested comparable hereditaments in respect of the Subject Property. The Tribunal is satisfied on the balance of probabilities that the comparables put forward by the Respondent are as to their characteristics demonstrably more similar to the Subject Property than those put forward by the Appellants. The fact that the comparable hereditaments put forward and relied upon by the Respondent were all similar in size, age and location to the Subject Property and were all two storey detached dwellings was compelling in the Tribunal's consideration of the matter
- 7.8 The Tribunal is further satisfied on the balance of probabilities that the unchallenged Capital Values of the comparables relied upon by the Respondent support the Respondent's contention that the appropriate Capital Value Assessment of the Subject Property at the AVD of 1st January 2005 is £375,000.00 as it presently appears in the Valuation List and that the evidence and submissions put forward by the Appellants are insufficient to displace the statutory presumptions as referred to in paragraphs 7.2 and 7.4 above.
- 7.9 Accordingly, the unanimous decision of the Tribunal is that the Appeal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland in respect of the Valuation of the property at 47 Kilhorne Gardens, Knock, Belfast BT5 6NT as contained in the Notice of Decision dated 3rd September 2015 is upheld and the Appellants' Appeal is dismissed.

Mr Alan Reid, Chairman
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 2nd August 2016