NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007
CASE REFERENCE NUMBER: NIVT 11/18

LAURA BELL & PHILIP BELL - APPELLANTS
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr. Alan Reid LL.B
Members: Tim Hopkins FRICS and David Rose

Belfast, 6th August 2019

DECISION

The unanimous decision of the Tribunal is that the appeal against the decision of the Commissioner of Valuation for Northern Ireland in respect of the valuation of the property at 37 Ballyhay Road, Donaghadee, County Down BT21 0LU as contained in the Certificate of Alteration dated 22nd May 2018 is dismissed and the Capital Value of the said property is confirmed as £215,000.

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 4th July 2018 the Appellants appealed to the Northern Ireland Valuation Tribunal ("the Tribunal") against the decision of the Commissioner of Valuation for Northern Ireland ("the Commissioner") as contained in a Certificate of Alteration dated 22nd May 2018 in respect of the Capital Value of a hereditament situated at 37 Ballyhay Road, Donaghadee, County Down BT21 0LU ("the Subject Property"), the Tribunal having by Order dated 24th July 2018 ordered time to be extended for the delivery of the Notice of Appeal.

1.3 A Valuation Certificate dated 19th April 2018 had previously been issued by the District Valuer in respect of the Subject Property and had been the subject of an appeal to the Commissioner of Valuation resulting in the issue of the Certificate of Alteration dated 22nd May 2018 which is the subject of this appeal. Although that Valuation Certificate of 19th April 2018 was not formally the subject of the appeal to the Tribunal, extensive reference was made to it by both parties to this Appeal and the Tribunal has therefore taken cognisance of it and makes reference to it in this Decision.

1.4 The Appellants, Mr and Mrs Bell, appeared and Mrs Bell represented them with assistance from Mr Bell. Ms Seline McClelland accompanied by Ms Gail Bennett appeared for and represented the Commissioner as Respondent.

1.5 In the Appellants' Notice of Appeal, the Appellants stated that the Capital Value of the Subject Property should be £164,000. The issues which the Tribunal considered on foot of the substance of the Appellants' Appeal were –

(a) The correct Capital Value of the Subject Property;

(b) Whether the Subject Property should be regarded as a house occupied in connection with agricultural land and used as a dwelling of a person whose primary occupation is the carrying on or directing of agricultural operations on that land whereby the Capital Value of the Subject Property should be reduced on the basis of the assumption that the Subject Property would always be so occupied and used, the Subject Property having been so regarded prior to the Appellants' ownership and occupation of it - in the Appellants' terms, whether "Farm Relief" should be applied; and

(c) If such "relief" should not apply, the date from which it should have been disapplied.

However, as the Appellants' appeal was in respect of the Certificate of Alteration dated 22nd May 2018 to the Tribunal, the only issue competent to the Tribunal for formal determination was issue (a). This Decision therefore determines the appeal on that specific basis alone. However, the Tribunal also considers it appropriate to make comment in this Decision regarding issues (b) and (c) as they were the subject of much of the exchange of views between the parties both before and during the hearing and clearly were relevant to the background to the circumstances of this appeal.

1.6 The Appeal was initially listed for oral hearing and a hearing was conducted by the Tribunal on 18th April 2019. At hearing the Appellants helpfully and understandably conceded that as the primary occupation of neither of the Appellants was the carrying on or directing of agricultural operations "Farm Relief" should not apply to the Subject Property. Arising from the submissions of the parties and evidence provided to the Tribunal, the Tribunal, by Order dated 18th April 2019 adjourned the hearing to afford the parties an opportunity to make further written submissions in relation to the date from which such relief should have been disapplied and directed that unless either of the parties requested a further oral hearing the Tribunal would then proceed to determine the appeal. Following the receipt of and exchange between the parties of those further submissions the Tribunal reconvened on 6th August 2019 to consider the appeal further, neither party having requested a further oral hearing.

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 oral evidence and also had before it copies of various documents including the following:-

3.1 The initial Valuation Certificate of 19th April 2018.

3.2 The Certificate of Alteration dated 22nd May 2018 which was the subject of this appeal by the Appellants.

3.3 The Appellants' Notice of Appeal dated 4th July 2018 and accompanying letter dated 21st June 2018.

3.4 A document entitled "Presentation of Evidence" submitted on behalf of the Commissioner by Seline McClelland of Land and Property Services and received by the Tribunal on 8th November 2018.

3.5 Correspondence between the Tribunal and the parties between 5th December 2018 and 19th February 2019.

3.6 Notice of Hearing issued to the parties by the Tribunal on 13th March 2019.

3.7 The Interim Order of the Tribunal dated 18th April 2019 as referred to above.

3.8 Correspondence between the Tribunal and the parties between 26th April 2019 and 4th June 2019 in respect of the further submissions of the parties pursuant to the said Interim Order.

All of these documents had been provided to both 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 Subject Property is a detached bungalow constructed in around 1979 with cavity block construction and a pitched tile roof with the exception of the sunroom which has a flat roof. It has a gross external area ("GEA") measuring 126.9 m^2 with an out building measuring 50.4 m^2. The out building

is in poor repair. The Subject Property comprises a reception, sunroom, kitchen, 3 bedrooms and a bathroom. It is located on the Ballyhay Road in Donaghadee almost 3 miles south-west of the town. It is accessed from the Ballyhay Road along a laneway which also provides access to four other dwellings.

4.2 The Subject Property had been purchased by the Appellants and the Appellants had taken up occupation in it on 25th August 2016.

4.3 Prior to the Appellants' ownership of the Subject Property its Capital Value in the Valuation List had been £164,000 net of agricultural allowance which had been applied in respect of the occupation of the Subject Property by the previous occupant. This had equated to a Capital Value of £205,000 before application of the agricultural allowance.

4.4 On 13th September 2016 the Revenues and Benefits section of Land and Property Services were notified that the Subject Property had a change of occupier. As a result of a revision of the entitlement to agricultural allowance, a revised Valuation Certificate was issued on 19th April 2018 removing the agricultural allowance and updating the Capital Value of the Subject Property to £205,000. This Valuation Certificate stated the effective date of the revised Capital Value was 25th August 2016 but the Valuation Certificate was not issued to the Appellants until 19th April 2018.

4.5 On 25th April 2018 the Appellants appealed the decision of the District Valuer as contained in the Valuation Certificate issued on 19th April 2018 to the Commissioner of Valuation. As a result, Seline McClelland carried out an inspection of the Subject Property on 18th May 2018 on behalf of the Commissioner and met with the Appellants. She took the view that the agricultural allowance should not apply as the Appellants did not meet the relevant criteria. She also noted that there was an extension to the property which had not previously been considered in connection with the Capital Value of the Subject Property. As a result, a Certificate of Valuation was issued on 22nd May 2018 revising the Capital Value upwards from £205,000 to £215,000. It is this Certificate of Valuation which the Appellants now appeal to the Tribunal.

4.6 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.

4.7 In arriving at the Capital Value Assessment figure of £215,000 regard was had to the Capital Value Assessments of other properties in the Valuation List considered to be comparable. The comparables were set out in a Schedule to the "Presentation of Evidence" submitted on behalf of the Commissioner. There were three comparable properties submitted on behalf of the Commissioner. Further particulars of those were provided together with photographs of the Subject Property and of all of the comparables.

4.8 The Capital Value Assessments of all of the comparable properties referred to on behalf of the Commissioner were unchallenged.

5. **The Appellants' Submissions**

As already noted at paragraph 1.6 above, the Appellants readily conceded at the hearing that neither of them was involved in the carrying on or directing of agricultural operations and that therefore an agricultural allowance should not apply to the Capital Value of the Subject Property. The Appellants however made the following submissions in relation to the other issues in the Appeal: -

5.1 The Appellants had notified Land and Property Services of their ownership and occupation of the Subject Property immediately after they went into occupation on 25th August 2016. At that time they had not been informed by Land and Property Services that agricultural allowance had been applied prior to their ownership and indeed had not previously been aware of the concept of an agricultural allowance in respect of a Capital Valuation until they were contacted in April 2018 by Land and Property Services to enquire why a "Farm Relief" form had not been returned by the Appellants. The Appellants told the Tribunal that Seline McClelland of Land and Property Services had then arranged to visit the Appellants at the Subject Property on 18th May 2018.

5.2 The Appellants stated that at the visit on 18th May 2018 Seline McClelland had indicated that the agricultural allowance was to be removed from the Capital Value of the Subject Property and also informed the Appellants that the sunroom and out building had not previously been taken into account on the Capital Value of the Subject Property as a result of which the Capital Value was to be increased from £205,000 to £215,000. The Appellants' submission was that they were informed by Seline McClelland that the increase in the Capital Value to £215,000 would not take effect until 2019.

5.3 The Appellants contended that the increase in the Capital Value of the Subject Property arose due to a "catalogue of errors" on the part of Land and Property Services. They stressed that they always paid their rates as honest hardworking individuals but the increased rates bills which they had received as a result of the revision of the Capital Value had caused stress and financial impact upon them. They indicated that they would not have purchased the Subject Property had they known that the rates payable were going to be so high.

5.4 The Appellants were aggrieved that Land and Property Services were unable to provide a copy of an original report or survey on the Subject Property indicating its characteristics (including its square footage and details of out buildings) historically.

5.5 In response to the comparables put forward on behalf of the Commissioner the Appellants invited the Tribunal to consider the following as alternative comparable properties to the Subject Property: -

5.5.1 A property at 43A Ballyhay Road Donaghadee with a GEA of 182 m^2 and a Capital Valuation of £190,000.

5.5.2 A property at 10B Ballyhay Road with a GEA of 63.7 m^2 and a Capital Value of £40,000.

5.5.3 A property at 39 Ballyhay Road with a GEA of 115 m^2 and a Capital Value of £65,000.

5.5.4 A property at 15 Ballyhay Road with a GEA of 198 m^2 and a Capital Value of £200,000.

5.5.5 A property at 31 Ballyhay Road with a GEA of 142 m^2 and a Capital Value of £160,000.

5.5.6 A property at 35 Ballyhay Road with a GEA of 74 m^2 and a Capital Value of £100,000.

The Appellants did not provide any further information or photographs of any of these properties for consideration by the Tribunal.
The Appellants contended that in each case these properties had a lower Capital Value than the Subject Property or that they had a similar Capital Value but were much larger properties than the Subject Property.

5.6 In their Notice of Appeal the Appellants indicated that they considered that the Capital Value of the Subject Property should be £164,000.

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 in the Valuation List of other properties.

6.2 On behalf of the Respondent Ms McClelland submitted that the three comparable properties detailed in her Presentation of Evidence supported a revised Capital Valuation of £215,000 in respect of the Subject Property. She made the point that all three comparable properties were situated in the same district, ward and neighbourhood as the Subject Property. She made reference to the three comparables as follows: -

6.2.1 The Respondents' first comparable was the property at 8 Ballyhay Road Donaghadee. It was similar to the Subject Property in that it was a detached bungalow built in the period 1966 to 1990. It had a GEA of 120.6 m^2 with a 9 m^2 porch and a 30 m^2 garage and 20.2 m^2 out building. Its Capital Value was £220,000. Ms McClelland considered this to be the most relevant comparable due to its location on the Ballyhay Road and its similar size to the Subject Property.

6.2.2 The second comparable submitted on behalf of the Respondent was a property at 64 Windmill Road Killaghy, Millisle. Again, this was a detached bungalow built in the period 1966 to 1990. It was smaller than the Subject Property with a GEA of 96 m^2 and a garage of 35 m^2. Similar to the Subject Property it shared a laneway from the main road with other properties. Its Capital Value (ignoring any agricultural allowance) was £195,000.

6.2.3 The third comparable put forward by the Respondent was at 29 School Road Killaghy, Millisle. Once again this was a detached bungalow built in the period 1966 to 1990. It was somewhat larger than the Subject Property, having a GEA of 139 m^2 and a separate detached garage of 18 m^2. Its Capital Value (ignoring any agricultural allowance) was £235,000.00.

6.3 In response to the properties put forward by the Appellants as suitable comparables, Ms McClelland contended that they were not suitable as all of them were of pre-1919 construction and were therefore not properly comparable to the Subject Property. Furthermore she contended that the property at 43A Ballyhay Road was very much larger than the Subject Property and therefore not properly comparable; the property at 10B Ballyhay Road was significantly smaller and of poor repair and therefore not properly comparable to the Subject Property; the property at 39 Ballyhay Road suffered from damp and was therefore not properly comparable to the Subject Property; the property at 15 Ballyhay Road was much larger than the Subject Property and had a light roof construction and was therefore not properly comparable to the Subject Property and the property at 35 Ballyhay Road was significantly smaller than the Subject Property and had a light roof construction and therefore again was not properly comparable to the Subject Property.

6.4 The Respondent therefore contended that the comparables put forward on behalf of the Respondent, rather than those put forward by the Appellant were appropriate comparable properties to be taken into account and supported the Capital Value of the Subject Property as assessed at £215,000.

6.5 In her Presentation of Evidence Ms McClelland had initially asserted that the effective date for the removal of the agricultural allowance (25th August 2016) had been established by reference to Article 13(1)(f)(i) of the 1977 Order. Ms McClelland contended that this supported the adoption of 25th August 2016 as the effective date for the removal of the agricultural allowance. Ms McClelland indicated that the process for the removal of the agricultural allowance in respect of the Capital Value of the Subject Property was not completed until early 2018 due to a backlog of work. When questioned by the Tribunal as to the Commissioners' interpretation of Article 13(1)(f)(i) Ms Bennett on behalf of the Commissioner conceded that subparagraph (i) specifically provided that where such an alteration was made otherwise than in consequence of an application for revision, then the alteration should take effect on and after the date of the commencement of the year in which the certificate of the alteration was served on the occupier. Ms Bennett however requested an opportunity to review the submissions made on behalf of the Commissioner in relation to the relevant legislation and, after considering the

representations of the parties in relation to this request the Tribunal adjourned the hearing to permit such further submissions to be made pursuant to the interim order of 18th April 2019.

6.6 Pursuant to the interim order, Ms Bennett, on behalf of the Commissioner, made a further submission which she stated had been made following consultation with the Revenues and Benefits section of Land and Property Services which she asserted had the statutory responsibility for effective dates and billing rather than responsibility for such matters resting with District Valuers or with the Commissioner. She stated that on 13th September 2016 the Land and Property Services Revenues and Benefits section had made an application to the District Valuer for a revision of the Valuation List in respect of the entry relating to the Subject Property. It was this application which had resulted in the removal of the agricultural allowance and that the District Valuer had advised Land and Property Services Revenues and Benefits section of an estimated date for that rating alteration of 25th August 2016. She stated that in providing this advice the District Valuer had considered that the provisions of Article 13(1)(c)(ii) applied and specifically the final limb of subparagraph (ii) which reads as follows –

"…the alteration shall…be deemed to have an effect on and after…as the case requires, the date of the happening of the event by reason of which the alteration is made".

Ms Bennett contended that the reason for the alteration was the removal of the agricultural allowance and that therefore the effective date – the date from which the agricultural allowance no longer applied - was the date of the happening of that event which was the date of the commencement of occupation by the Appellants, 25th August 2016. She stated that the legislation which had been quoted in the Presentation of Evidence submitted on behalf of the Commissioner by Ms McClelland in relation to the matter, Article 13(1)(f)(i), was quoted in error.

7. **The Tribunal's Decision**

7.1 As already indicated the only issue competent to the Tribunal for formal determination is the appropriate Capital Value to be applied to the Subject Property.

7.2 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 has been assessed at the relevant Antecedent Valuation Date ("AVD"), which is 1st January 2005, at a figure of £215,000. On behalf of the Commissioner it has been contended that this 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.

7.3 The Tribunal is required to consider the Appellants' Appeal in accordance with the provisions of the 1977 Order and must begin its task by taking into

account 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 the Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown". The onus is therefore upon the Appellant 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.

7.4 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 matter provided for in Schedule 12, paragraph 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.

7.5 The Tribunal then turns to consider whether the evidence put before it or the arguments made by the Appellant are sufficient to displace the statutory presumption. Those arguments have been summarised above.

7.6 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.

7.7 The Tribunal was referred by the parties to a number of potentially comparable hereditaments the details of which have been referred to above and the Tribunal has considered the submissions of the parties in relation to each of the suggested comparables.

7.8 Having done so, the Tribunal is satisfied on the balance of probabilities that the properties put forward on behalf of the Commissioner as comparable properties to the Subject Property are more appropriate comparables than those put forward by the Appellants and, in that regard, the evidence put forward by the Appellants is insufficient to displace the statutory presumption contained within Article 54 (3) of the 1977 Order as referred to at paragraph 7.3 above. Accordingly the Tribunal is satisfied on the balance of probabilities that the appropriate Capital Value assessment of the Subject Property at the AVD of 1st January 2005 is £215,000.

8. Further Observations

8.1 In this appeal it was clear that a significant issue of contention between the parties was the effective date upon which the removal of the agricultural allowance should take effect. Much time and energy was expended by the parties in disputing the issue and the Tribunal therefore considers it may be

helpful to the parties to provide them with its observations on the issue. The Tribunal entirely accepts the evidence of the Appellants that when they became the owners of the property on 25th August 2016, they notified Land and Property Services of the change of ownership. The Tribunal also accepts their evidence that, at that time, they were unaware that the Capital Value of the property as shown in the Valuation List was net of an agricultural allowance which had been applied to the previous occupant and that they only became aware of this when a revised Valuation Certificate was issued to them on 19th April 2018 informing them that agricultural allowance had been removed.

8.2 The evidence on behalf of the Commissioner was that the District Valuer began to consider the entitlement to agricultural allowance on 13th September 2016 but that, due to a backlog of work, this exercise was not completed until the revised Valuation Certificate was issued on 19th April 2018 – a period of delay of some 19 months. Such delay is obviously far from ideal. Ms McClelland on behalf of the Commissioner indicated that a "domestic Capital Value of Farm Houses" questionnaire had been issued to Appellants but was not returned. The Appellants deny ever having received such a questionnaire or indeed being informed that the matter was under consideration at any time prior to the receipt by them of the revised Valuation Certificate issued on 19th April 2018. No documentary evidence was placed before the Tribunal on behalf of the Commissioner to support the Commissioners' contention that a questionnaire had been issued to the Appellants and therefore the Tribunal prefers the Appellants' evidence on this discrete issue.

8.3 The confusion on the part of the Commissioner in referring the Tribunal to the relevant provisions of the legislation has further frustrated the Tribunal's, and probably the parties', consideration of these issues. It may therefore be helpful to set out in full the provisions of Article 13 (1) of the 1977 Order which are as follows: -

13.—(1) Where an alteration in relation to a hereditament is made in a valuation list, then, for the purposes of levying any rate—

(a) where—

(i) the list is a new valuation list, and

(ii) the alteration is made in consequence of an application for revision which was served on the district valuer before the end of the period of six months beginning with the date on which the list came into force, and

(iii) the hereditament was included in a valuation list superseded by the new list to any extent in relation to the hereditament and, since the new list came into force, has not come into occupation or become rateable under Article 25A after having been out of occupation on account of structural alterations, or has not been affected by the happening of any event which is a material change of circumstance such as is mentioned in paragraph 1(*b*) to (*g*) of Schedule 6,

the alteration shall be deemed to have had effect on and after the date on which the list came into force;

(b) where the alteration is made by way of correction of a clerical error, that valuation list shall have effect, and be deemed always to have had effect, as so corrected;

(c) where the alteration—

(i) consists of the inclusion in that valuation list of a newly erected or newly constructed hereditament or an altered hereditament which has been out of occupation on account of structural alterations and has not become rateable under Article 25A, or

(ii) consists of the revision in that valuation list of an altered hereditament which has been out of occupation on account of structural alterations and has not become rateable under Article 25A or is made by reason of any event which is a material change of circumstances such as is mentioned in paragraph 1(*b*) to (*g*) of Schedule 6,

the alteration shall subject to paragraphs (1A) and (1B) be deemed to have had effect on and after the date on which the new or altered hereditament came into occupation (or became rateable under Article 25A if earlier) or, as the case requires, the date of the happening of the event by reason of which the alteration is made;

(d). . . . . .

(e) where the alteration is made pursuant to Article 55 on a review, following the final disposal of an appeal under Article 54 or 54A, of an alteration in, or decision not to alter, a valuation list or of a revaluation (“the interim revision”), the alteration shall be deemed to have had effect on and after the same date as that on which any alteration which was made or could have been made in consequence of the interim revision had or would have had effect;

(f) where neither sub-paragraph (a), (*b*), (*c*),... nor (*e*) applies the alteration shall have effect, or be deemed to have had effect,—

(i) on and after the date of the commencement of the year in which the application was made for the revision of that valuation list in consequence of which the alteration is made (whether the alteration is made immediately following the revision or on appeal), or, if the alteration is made otherwise than in consequence of an application, the year in which a certificate of the alteration was served on the occupier of the hereditament (or, if the alteration is made on a review under Article 51(2) or on appeal, the year in which a certificate of the alteration that is the subject of the review or appeal, or was the subject of any earlier review or appeal, was so served), or

(ii) on and after such later date (if any) as is appropriate in all the circumstances.

8.4 Article 13 (1) therefore sets out the effect, in various instances, of alterations being made in the Valuation List.

8.5 Ms Bennett in her submission dated 26th April 2019 stated that, in providing the advice to Land and Property Services Revenues and Benefits section that the effective date for the removal of the agricultural allowance was 25th August 2016, the District Valuer considered that the provisions of Article 13 (1) (c) (ii) applied. However, a careful reading of sub-paragraph (c) does not support that conclusion. Sub-paragraph (c) (ii) is made up of two limbs. The first limb relates to a situation "where the alteration …. consists of the revision in that Valuation List of an altered hereditament which has been out of occupation on account of structural alterations and has not become rateable under Article 25A". That limb is clearly not applicable in the circumstances of this appeal. The second limb relates to a situation "where the alteration is made by reason of any event which is a material change of circumstances such as is mentioned in paragraph 1 (b) to (g) of Schedule 6" and, as submitted by Ms Bennett, goes on to provide that "…the alteration shall ….be deemed to have had effect on and after … as the case requires, the date of the happening of the event by reason of which the alteration is made". However, as can be seen, for the second limb to apply, there must first have been a material change of circumstances such as is mentioned in paragraph 1 (b) to (g) of Schedule 6.

8.6 Paragraph 1 of Schedule 6 reads as follows: -

1. In this Order—

"material change of circumstances" means a change of circumstances which consists of—

(a) the coming into occupation of a newly erected or newly constructed hereditament or of a hereditament which has been out of occupation on account of structural alterations; or

(b) a change in the value of a hereditament caused by the making of structural alterations or by the total or partial destruction of any building or other erection by fire or any other physical cause; or

(c) the happening of any event whereby —

(i) any property or part of any property begins, or ceases, not to be treated as a hereditament; or

(ii) any hereditament or part of any hereditament begins or ceases to be entitled to be distinguished in the valuation list in pursuance of Article 41, 42 or 43; or

(d) property previously valued as a single hereditament becoming liable to be valued as two or more hereditaments; or

(e) property previously valued as two or more hereditaments becoming liable to be valued as a single hereditament; or

(f) a hereditament becoming or ceasing to be a dwelling-house; or

(g) a hereditament being used to a greater or lesser extent for the purposes of a private dwelling or private dwellings.

8.7 The removal of an agricultural allowance which had previously been applied to a Subject Property is not one of the material changes of circumstance set out in paragraph 1 (b) to (g) of Schedule 6 and therefore the second limb of subparagraph (c) (ii) of Article 13 (1) does not apply in the circumstances of this case.

8.8 Sub-paragraph (f) of Article 13 (1) is stated to apply in a situation where none of sub-paragraphs (a), (b), (c), or (e) applies. Sub-paragraph (f) is the provision which was originally cited by Ms McClelland in her Presentation of Evidence on behalf of the Commissioner and Ms Bennett had conceded during the hearing of this appeal that the effect of Article 13 (1) (f) (i) was that, where an alteration was made otherwise than in consequence of an application, then the alteration should have effect on and after the date of the commencement of the year in which the certificate of the alteration was served on the occupier of the hereditament. It therefore appears to the Tribunal that the effect of that removal should be 1st April 2018 being the commencement of the year in which the certificate of the alteration was served upon the Appellant in this case.

8.9 However, as the Valuation Certificate which is the subject of this appeal is the Valuation Certificate issued on 22nd May 2018 issued by the Commissioner of Valuation rather than the Valuation Certificate issued by the District Valuer on 19th April 2018 it is not open to the Tribunal to make a formal order in respect of these observations. The Tribunal however suggests that the Commissioner and Land and Property Services generally may wish to review this issue in light of these observations and of the considerable delay on the part of the District Valuer in issuing the certificate of 19th April 2018 and the circumstances of this appeal generally. The Tribunal would further suggest that the Revenue and Benefits section of Land and Property Services might have regard to the provisions of Article 13 (1) (f) (ii) which allow an alteration to take effect "on and after such later date (if any) as is appropriate in all the circumstances".

9. Formal Decision

9.1 Accordingly the unanimous decision of the Tribunal is that the appeal against the decision of the Commissioner of Valuation for Northern Ireland in respect of the valuation of the property at 37 Ballyhay Road, Donaghadee, Co Down BT21 0LU as contained in the Certificate of Alteration dated 22nd May 2018 is dismissed and the Capital Value of the said property is confirmed as £215,000.

Mr Alan Reid, Chairman
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 5 September 2019