

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007 (AS AMENDED)

CASE REFERENCE NUMBER: 34/17

STEVEN GINGLES – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O’Neill

Members: Mr H McCormick MRICS and Ms Noreen Wright

Date of hearing: 25 April 2019, Belfast

DECISION

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland is not upheld and the appellant’s appeal is allowed.

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (“the 1977 Order”). At the hearing of the matter on 16 January 2019 the appellant attended and the respondent was represented by Ms Gail Bennett and Ms Wendy Marshall. The matter was adjourned to enable certain information and submissions to be provided to the tribunal. The matter was subsequently decided on 25 April 2019.
2. The appellant by Notice of Appeal dated 20 March 2018 appealed against the decision of the Commissioner dated 5 March 2018.
3. This appeal is in respect of the valuation of a hereditament situated at 9 Ballyrickard Road, Ballyedward, Larne, County Antrim, BT40 3DP (“the property”).

The Law

4. The statutory provisions are to be found in the 1977 Order as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). The tribunal does not intend in this decision to set out the statutory provisions of article 8 of the 2006 Order, which amended article 39 of the 1977 Order as regards the basis of valuation, as these provisions have been fully set out in earlier decisions of this tribunal. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in this matter.

The Evidence

5. The tribunal heard representations from the appellant himself and from Ms Bennett and Ms Marshall on behalf of the respondent. The tribunal had before it the following documents:
 - (a) The Commissioners Decision dated 5 March 2018;
 - (b) The appellants’ Notice of Appeal dated 20 March 2018;
 - (c) A document entitled ‘Presentation of Evidence’ dated 24 July 2018 and prepared on behalf of the respondent Commissioner by Ms Wendy Marshall and submitted to the tribunal for the purposes of the hearing;
 - (d) Copy letter from Mr Gingles dated 24 August 2018;
 - (e) Copy email from Commissioner of Valuation to the tribunal dated 26 September 2018;
 - (f) Copy Notice of Adjournment dated 17 January 2019;
 - (g) Copy email from the Respondent dated 21 January 2019;
 - (h) Copy email from the Appellant dated 27 February 2019;
 - (i) Copy email from the Respondent dated 8 April 2019;
 - (j) Correspondence between the tribunal office and the parties.

The Facts

- (1) The property consists of a detached house situated at 9 Ballyrickard Road, Larne, County Antrim BT40 3DP (‘the property’). The property is of brick/block walls with a tile/slate roof. The property has full central heating.
- (2) The property has a gross external area of 231m². It has a garage of 61m².

- (3) The property was built in 2017. The property was entered into the valuation list with a capital value of £295,000. This valuation covered the dwelling, garage and outbuildings of 420m². This was appealed to the Commissioner for Valuation who valued the property at £270,000. This valuation covered the dwelling and the garage, the outbuildings having been removed from the valuation as they were considered to be used wholly in connection with agricultural operations and therefore not liable to rates. The appellant then appealed the valuation to this tribunal.

The Respondent's submissions

6. The Commissioner's Presentation of Evidence to the tribunal is that in deciding the capital value of the property regard was had to capital values in the valuation list of comparable hereditaments in the same state and circumstances. Details of these comparable properties were set out in a schedule to the Presentation of Evidence dated 24 July 2018, with further particulars of same, including photographs of the comparable properties. Four comparables were referred to in total. These were capital value assessments, the details of which are as follows:

- (a) The first comparable referred to was 3A Ballyrickard Road, Larne, County Antrim, which has a gross external area of 225.2m² and a garage of 51.7m². This is a privately built post 1990 detached chalet with 1.5 storeys. The assessed Capital Value is £220,000. The Presentation of Evidence states that this property is subject to a review of its capital valuation, given that the respondent considers that the assessment is out of tone having reviewed the evidence in the immediate vicinity.
- (b) The second comparable referred to was 32A Ballyrickard Road, Larne, County Antrim, which has a gross external area of 228m² and a garage of 76.7m². This is a privately built post 1990 detached chalet 1.5 storey property. The assessed Capital Value is £270,000. It was clarified at hearing that this property is adjacent to agricultural outbuildings to the rear of the property, which are accessed by a shared lane. It is approximately two miles from the subject property.

(c) The third comparable referred to was 58 Upper Ballyboley Road, Larne, County Antrim. This is a privately built post 1990 chalet 1.5 storey property. It has a gross external area of 226m² and a garage of 22m². The assessed Capital Value is £270,000. The case is subject to review to value the garage as a bigger garage has been built on the property. It was confirmed that this was in a more rural location and was a few miles from the subject property.

(d) The fourth comparable referred to was 28 Ballyrickard Road, Larne, County Antrim. This is a detached two storey house. It has a gross external area of 231m² and a garage of 56m². The assessed Capital Value is £270,000. It was clarified at hearing that this property is adjacent to a farm yard. There is no shared laneway at this property.

7. The respondent acknowledged that number 3A Ballyrickard Road, Larne was the property which was most similar to the subject property. However, she indicated that she considered that it was out of tone with other properties in the area.
8. In relation to 8 Ballyrickard Road, Larne, which is a comparable relied on by the appellant, the respondent stated that this was a detached chalet bungalow with a gross external area of 277m² and a garage of 57.4m². She stated that this was in closer proximity to the A8 Belfast Road and is in a different era to the subject, having been built in 1966-1990. Reference was also made to *Church v Commissioner of Valuation* NIVT 4/15 in which it was held that newly constructed properties will generally achieve a higher price on the open market than older properties. Therefore, in assessing capital values for new properties the capital values of properties of a different era should not carry the same weight as those of newer properties.

The Appellant's submissions

9. The appellant submits that the capital valuation of the property is incorrect. He relies on several grounds to assert this as outlined in the paragraphs below.

10. The appellant, in his notice of appeal referred to property at 8 Ballyrickard Road, Larne which has an area of 277m² and has a capital value of £200,000. This property was built by the appellant.
11. He also referred to 3A Ballyrickard Road, Larne, County Antrim, which was a property built by him in 2014. He said that it was a mirror image of the subject property which he had also built.
12. The appellant stated that both 8 Ballyrickard Road and 3A Ballyrickard Road have good sized gardens to the front and rear and uninterrupted views of the countryside whereas his house looks straight into a large agricultural shed. Furthermore, he stated that the subject property has no garden but merely has a small hardened area which is smaller to the other properties listed by the respondent.
13. He further indicated that the subject property is so close to the agricultural buildings that there are smells coming into the house from silage etc. He also confirmed that the position of the house was a planning requirement.
14. The appellant further stated that the subject property has access via a shared lane to the agricultural farm buildings.
15. The appellant disagreed with the proposition that new houses being worth more than older ones. He referred to a number of properties which were for sale in his local area:
 - (a) 30 Ballycraigy Road, size 238.5m², capital value £205,000, for sale at £499,000;
 - (b) 380A Old Glenarm Road, size 281m², capital value £225,000, for sale at £450,000
 - (c) 45 Belfast Road, size 213m², capital value £185,000, for sale at £349,950;
 - (d) 111 Glenarm Road, size 343m², capital value £235,000, for sale at £799,950.

In this regard he stated that in these examples the capital value is much lower than the market value, yet the size of the properties are larger than the subject property. He

compares this to the subject property where the capital value is £270,000 and yet the market value is, according to the appellant, £250,000-£270,000.

The Oral Hearing of the matter and Post Hearing matters

16. At the hearing of this matter on 16 January 2019, the tribunal asked the respondent to confirm the nature of the comparable evidence used to assess the capital value of 3A Ballyrickard Road, Larne when it was initially entered into the valuation list, it having been built in 2014. The respondent did not have same to hand.
17. In the light of the relevance of the capital valuation of 3A Ballyrickard Road, Larne, and how this was arrived at when it was first entered into the valuation list, the tribunal adjourned the matter so that the respondent could provide details of the original valuation of 3A Ballyrickard Road, Larne at £220,000 to include full details of the comparables used and the rationale applied in the assessment of its capital value.
18. The respondent by email dated 21 January 2019 stated that 3A Ballyrickard Road was first entered into the valuation list with effect from 1 May 2013 and the capital value was assessed at £220,000. The comparables used to value this property [3A Ballyrickard Road] were noted to be:
 - (a) 27 Ballymullock Road, Larne. – This is a privately built post 1990 detached house. It has a gross external area of 219.7m² and a garage of 63m². The assessed Capital Value is £210,000.
 - (b) 62A Belfast Road, Larne – This is a privately built post 1990 detached house. It has a gross external area of 235.49m² and a garage of 30.2m². The assessed Capital Value is £215,000.
 - (c) 81 Deerpark Road, Larne – This is a privately built post 1990 detached two storey house. It has a gross external area of 212m² and a garage of 26m². The assessed Capital Value is £200,000.

(d) 4 Deerpark Road, Larne – This is a privately built post 1990 detached house. It has a gross external area of 202m² and has no garage. The assessed Capital Value is £185,000.

19. The respondent submitted that 27 Ballymullock Road is located two miles from the subject and is located on a rural road. While it is in the same era as the subject property, the respondent considered that this was not a good comparable in relation to the valuation of the subject property as it is a different house type.
20. The respondent submitted that 62A Belfast Road, Larne was located up a shared laneway off the A8 and is again in close proximity to the subject property (approximately 0.5 miles away). However again, while it is in the same era as the subject property, the respondent stated that it has a much smaller garage and is a different house type to the subject property.
21. In relation to 81 Deerpark Road, Larne, the respondent stated that this property is close to the junction of Deerpark Road and Shanes Hill Road and is about one mile from the subject property. Again, it is of the same era as the subject but was not thought by the respondent to be the most comparable given that it is a two storey house and is slightly smaller with a smaller garage.
22. In relation to 4 Deerpark Road, the property is located just off the A8 and is about three miles from the subject. The respondent stated that it is of the same era but is of a different house type and does not benefit from a garage.
23. The appellant was afforded the opportunity to comment on this evidence submitted by the respondent. He commented that he considered that the capital valuation for 3A Ballyrickard Road was a fair representation in comparison to his property. He referred to the fact that 3A and the subject property were mirror images of each other and so one should not have a valuation of £50,000 greater than the other. He acknowledged that the comparables that had been used to assess the capital value of 3A were of a different house type but he considered

that a two storey house of the same condition, era, floor area etc should be valued higher on the valuation list.

24. The appellant stated that he considered that 8 and 3A Ballyrickard Road were located much closer to the subject property than the comparables given by the respondent. He again referred to the fact that 8 and 3A have private entrances and large gardens.

25. The appellant calculated the price in £ per square metre as follows:

(a) 8 Ballyrickard, Road, Larne – capital value £200,000, size 277m² making £722 per m².

(b) 3A Ballyrickard, Road, Larne – capital value £220,000, size 225m² making £976 per m².

(c) 9 Ballyrickard, Road, Larne (the subject property) – capital value £270,000, size 231m² making £1168 per m².

In the light of this he submitted that the subject property is over-valued as there is a £446 difference in the capital valuation per m² of the subject property compared with 8 Ballyrickard Road. He submits that a reasonable figure for capital value of the subject property would be £210,000.

The Tribunal's Decision

26. Article 54 of the 1977 Order enables a person who is dissatisfied with the Respondent's valuation as to capital value to appeal to this tribunal. In this case the capital value has been assessed at a figure of £270,000. On behalf of the respondent it has been contended that this figure is fair and reasonable in comparison to other properties. The appellant's contentions are as stated above and the appellant contends that the proper valuation should be £200,000.

27. It is appropriate to remember that there is a statutory presumption in Article 54(3) of the 1977 Order in terms that "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." It is therefore up to the appellant in any case

to challenge and to displace that presumption, or perhaps for the Respondent 's decision to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.

28. The general rule as to the basis of the value to be taken into account is contained in article 7(1) of the 1977 Order (as amended) in that

“(a) Subject to the provisions of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in paragraphs 9 to 15, the hereditament might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date.
(b) In estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised.”

29. As has been pointed out in a recent decision of the Lands Tribunal in *RZ v Commissioner of Valuation* (VT/2&3/2016 [2017]) the tribunal in deciding cases derives assistance from the following cases

McKeown Vintners v Commissioner of Valuation VR/9/1985

“When, however, a revision of an entry in a valuation list is under consideration different principles come into play; in particular paragraph 2(1) and the concept of comparable hereditaments. The reason is simple. The very completion of the list, at general revaluation, by itself creates comparables, and paragraph 2(1) can begin to play its role. That role is this. There can, as the Tribunal has already stated, be no challenge to the principles applied at general revaluation. Any challenge before the Lands Tribunal must be by way of an application for revision of an entry already in the list. As time progresses, if actual rental levels and turnover figures were used for the revision of a particular entry in the valuation list, it would inevitably result in that entry being increased to a level significantly higher than other entries in the list. There must therefore be a limiting factor, and this provided by paragraph 2(1) which, in essence, produces what is often termed a ‘tone of the list’, and which ensures fairness and uniformity. It does this by providing that at revision stage regard ‘shall be had’ to the net annual values in the valuation list of comparable hereditaments. Its role will be discussed in greater detail later. Suffice to say that the significance of this role increases with the passage of time...”

In the subject reference for “paragraph 2(1)” read “paragraph 7(2)” for “net annual value” read “capital value” and for “rent/rental levels” read “capital value/capital value levels”.

A-Wear Limited v Commissioner of Valuation VR/3/2001

“The early days are important and the Tribunal agrees with Mr Hanna that the practical reality is that, if entries are not challenged, or if challenges are abandoned, the point will have been reached within a relatively short space of time at which it would have to be said that these settlements establish a reliable Tone of the List for the hereditaments in a location or category. At that stage, although still a question of balance, by virtue of paragraph 2 of schedule 12, a district valuer is almost obliged to apply that level. Skilled assessment based on proper research may justify an adjustment or allowance in individual cases, but the Tone of the List provision, although protecting ratepayers from unfairness resulting from inflation, does make anything other than a first phase challenge difficult.”

Elias Altrincham Properties v Commissioner of Valuation VR/15/2011

“For the following reasons the Tribunal is not persuaded that Mr Elias has succeeded in displacing the presumption that the valuations shown in the valuation list were correct. Both in law and in practice the time for an effective challenge to the evidential basis, that set the tone of the list at the relevant General Revaluation, is long past. (See *A-Wear Ltd v Commissioner of Valuation* [2003] and *McKeown Vintners Ltd v Commissioner of Valuation* [1991].) Any attempt now to reconsider the principles and basis on which the tone was set would be mainly speculation ... At the time the list came into operation, apart from one exception, the assessments were not challenged...”

30. The appellant compared the ratio of capital value to current market value in respect of a number of properties in the area which are for sale. He used this to conclude that the capital value of the subject property is incorrect. However, this is not using the correct basis for valuation.
31. The appellant has also undertaken a calculation of capital value divided by the size of the property to give a price per m² and in comparing the ratio of this for the subject and for other properties he has concluded that the capital value of the subject property is incorrect. Again, this is not the correct basis for assessing the capital valuation. The correct basis is set out in the legislation and case law referred to above.
32. In relation to the determination of the capital valuation the tribunal has to consider the comparable evidence submitted to it by the parties. In this regard in usual circumstances it would be the case that the property at 3A Ballyrickard Road would be a very important comparable in that it is in very close proximity to the subject property, was built in 2014 and is slightly smaller than the subject. It is, as the appellant states, a mirror image of the subject property. It has a capital

valuation of £220,000. However, the matter becomes more complicated in that the respondent has stated that 3A Ballyrickard Road is currently subject to review as it is considered to be out of tone.

33. The tribunal was anxious to know how the basis upon which the capital value of 3A Ballyrickard Road, was arrived at, given that it was added to the valuation list relatively recently. The matter was adjourned at hearing to facilitate this evidence being given and the appellant had an opportunity to respond to it. The comparable evidence used to support the original valuation of 3A Ballyrickard Road, having been provided has introduced a set of comparables for consideration in addition to the comparables initially provided by the respondent for the subject property.
34. In this regard the respondent would state that the comparables originally used for 3A Ballyrickard Road are not in the same state and circumstance as the subject and offers different comparables as evidence that the capital valuation of the subject property should be £270,000.
35. In contrast to this the appellant argues that the capital valuation of 3A Ballyrickard Road, and by extension the comparables used to assess its capital value, are a fair representation of the value of the subject property and that the capital valuation should be similar and not have a difference of £50,000.
36. Therefore, in coming to its decision in this matter the tribunal has had to consider *all* the comparable evidence placed before it including not only the comparables used by the respondent to value the subject property but also the comparables used to undertake the original valuation of 3A Ballyrickard Road.
37. In this regard the tribunal finds that the most appropriate comparison is No 62A Belfast Road, Larne. This is a property which is privately built post 1990. It has a gross external area which is almost identical to the subject property (235.49m² where the subject property is 231m²) albeit that it has a smaller garage. It is approximately 0.5 miles from the subject property. It is argued by the respondent that the property is not of a same property type and that this means that it does not form a good comparable. The tribunal acknowledges that the property is a two-storey house rather than a 1.5 storey chalet but in the consideration of the

tribunal in this case the other factors, such as the proximity to the subject and the similar size to the subject property outweigh this.

38. The tribunal also finds that this comparable (62A Belfast Road) is supported by 81 Deerpark Road, Larne which is a property which was privately built post 1990. It has a gross external area of 212m² and a garage of 26m². It is a two-storey house and is located about one mile from the subject property. These valuations are also supported by the valuations of 27 Ballymullock Road, Larne and 4 Deerpark Road, Larne.
39. The tribunal prefers the comparables stated above in preference to that of 32A Ballyrickard Road, Larne, which is farther away from the subject property (two miles approximately) and also 58 Upper Ballyboley Road which is approximately 3.9 miles from the subject property, albeit that they are of similar size to the subject property.
40. The tribunal therefore is of the view that the capital valuation of the subject property would be £225,000. However, an allowance should be made for the fact that the subject property does not have an uninterrupted view, but rather looks directly into a large agricultural shed. Neither does the subject property have a front garden. Furthermore, it is accessed by a shared laneway. In the light of this the tribunal unanimously is of the view that the appropriate capital valuation of the subject property is £215,000 and the appellant succeeds in this appeal and the tribunal orders that the valuation list be amended accordingly.

Signed: Mr Charles O'Neill

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to all parties: 23rd May 2019