

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

CASE REFERENCE NUMBER: NIVT 26/17

RORY MOYNAGH APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr. Alan Reid LL.B

Members: Eric Spence and David Rose

Belfast, 21st November 2018

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 49 Tivnacree Road, Derrynoose, County Armagh, BT60 3EE as contained in the Notice of Decision dated 20th December 2017 is upheld in confirmation of the Capital Value of £320,000.00 and the Appellant's 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 12th January 2018 the Appellant appealed to the Northern Ireland Valuation Tribunal ("the Tribunal") against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland ("the Commissioner") dated 20th December 2017 in respect of the Capital Value of a hereditament situated at 49 Tivnacree Road, Derrynoose, County Armagh, BT60 3EE ("the Subject Property").
- 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 20th December 2017.
- 3.2 The Appellant’s Notice of Appeal dated 12th January 2018.
- 3.3 Order of the Tribunal dated 7th February 2018 extending the time limit for delivery of a Notice of Appeal.
- 3.4 A document entitled “Presentation of Evidence” submitted on behalf of the Commissioner by Gerard McGennity MRICS of Land and Property Services and received by the Tribunal on 20th August 2018.

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 two storey detached dwelling built around 2004. It is located in a rural location some 1.6 miles from Derrynoose and 6 miles from Keady.
- 4.2 The gross external area (“GEA”) of the Subject Property is 335.5m² and it has a separate detached garage with a GEA of 58.5m².
- 4.3 The Subject Property is located on Tivnacree Road which is a minor road near Derrynoose Village. The road has no road markings, is partly unsurfaced and very narrow in places.
- 4.4 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.

- 4.5. The Subject Property had previously been entered into the Capital Valuation List with a capital value of £370,000.00. On 24th November 2017 the Appellant had made an Application to the District Valuer to challenge the Capital Valuation. This had resulted in the Capital Valuation being reduced to £320,000.00.
- 4.6 On 20th December 2017 the Appellant had lodged an appeal against the District Valuers Decision in relation to the capital value to the Commissioner of Valuation. This resulted in the Commissioner of Valuation confirming the capital value at £320,000.00. It is this Decision of the Commissioner of Valuation which is under Appeal in this Hearing.
- 4.7 In arriving at the capital value assessment figure of £320,000.00 regard was had to the capital value assessments of other properties in the Valuation List considered comparable. The comparables were set out in an Appendix to the "Presentation of Evidence" submitted on behalf of the Commissioner. There were a total of four comparables, particulars of which were provided together with photographs of each of the comparables and of the Subject Property. Like the Subject Property, all four of the comparables were located in the Electoral Ward of Keady.
- 4.7.1 The first comparable was the property at 48 Fergot Road, Derrynoose, Listarlet, County Armagh. This was a detached two storey dwelling constructed post 1990 with a habitable space of 315m². Its unchallenged capital value was £280,000.00.
- 4.7.2 The second comparable property was the property at 80 Fergot Road, Derrynoose, Listarlet, County Armagh. Again, this was a two storey detached dwelling constructed post 1990. It had a habitable space of 396m² and its unchallenged capital value was £350,000.00.
- 4.7.3 The third comparable was the property at 132 Clay Road, Crossdened, Keady, County Armagh. Once again this was a detached two storey dwelling constructed post 1990. It had a habitable space of 340.5m² with a garage of 55m². Its unchallenged capital value was the same as the Subject Property - £320,000.00.
- 4.7.4 The fourth comparable was the property at 177 Crosskeys Road, Knockrean, County Armagh. Once again this was a detached two storey dwelling constructed post 1990. It had a habitable space of 366m² with a garage of 55m². Its unchallenged capital value was £345,000.00.

5. The Appellant's Submission

The Appellant, in summary, made the following submissions in his Notice of Appeal to the Tribunal:-

- 5.1 The Capital Valuation of the Subject Property was significantly in excess of its market value which he considered to be £240,000.00.

- 5.2 The capital value of £320,000.00 was excessive in view of the isolated location of the Subject Property, the poor condition of local access roads, the lack of street lighting in the locality, frequent power cuts in the locality and the lack of refuse collections from the Subject Property.
- 5.3 The capital value of the Subject Property at £320,000.00 equated to a capital value per square metre of £953.00. The Appellant contended that this “per square metre” figure was in excess of those calculated for two other properties at 28A Castleblayney Road with a figure of £817.00 per square metre and 48 Carrickaduff Road with a figure of £888.00 per square metre. The Appellant further stated that these properties also benefited from better access roads and refuse collections than the Subject Property. He contended that the capital value of the Subject Property should be assessed on a similar figure per square metre to the two properties he referred to and that a further “discount” should be applied for the rural location, poor access roads and lack of refuse collections at the Subject Property.
- 5.4 The Appellant’s submission was that the capital value of the Subject Property should be £240,000.00.

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 It was submitted on behalf of the Commissioner that for the purposes of a revision to the Valuation List the relevant legislation requires that regard should be had to the assessment of other comparable hereditaments already in the Valuation List which were in the same state and circumstances as the Subject Property.
- 6.3 The basis of value is capital value as at 1st January 2005 rather than a current market value.
- 6.4 Lack of refuse collection, street lighting and other services are all typical of rural living and apply to comparable properties in the same state and circumstances as the Subject Property and are therefore already reflected in the capital values of such comparable properties.
- 6.5 The four comparable properties referred to in the Presentation of Evidence were similar to the Subject Property in terms of size, construction and rural location and supported the capital value assessment of the Subject Property in the sum of £320,000.00.

6.6 It was also Mr McGennity's view that the two comparable properties referred to by the Appellant in this Notice of Appeal supported that capital value assessment of £320,000.00 in respect of the Subject Property.

7. The Tribunal's Decision

7.1 Article 54 of the 1977 Order enables a person to appeal to the Tribunal against a 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 Antecedent Valuation Date ("AVD") of 1st January 2005 at a figure of £320,000.00. 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. Both the Appellant and the Respondent have referred the Tribunal to a number of potentially comparable hereditaments the details of which are referred to above.

7.6 As Schedule 12 requires that the Capital Value of the Subject Property must be assessed as the amount which it might reasonably have been expected to

realise if sold on the Open Market by a willing seller on 1st January 2005, evidence of its current value (and of the current value of comparable hereditaments in the same state and circumstances) is not relevant.

- 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. With regard to the two comparables referred to by the Appellant at 28A Castleblayney Road and 48 Carrickaduff Road, the information provided by the Appellant in relation to these properties was limited to their general rural location and the Appellant's calculation of "capital value per square metre". That being the case, the Tribunal was not persuaded on the balance of probabilities that those properties were necessarily useful comparable properties, although the Tribunal did note that both parties to the Appeal contended that they supported their respective views of the capital value of the Subject Property. The Tribunal was however satisfied on the balance of probabilities that the comparable properties placed in evidence before the Tribunal by the Respondent being the properties at 48 Fergot Road, 80 Fergot Road, 132 Clay Road and 177 Crosskeys Road were appropriate comparable properties. The details of all of these properties have been referred to in the record of evidence above. Taking account of the type of construction of these properties and of their location, age and size, the Tribunal was satisfied on the balance of probabilities that their respective capital values supported a capital value of £320,000.00 in respect of the Subject Property.
- 7.8 The Tribunal is therefore satisfied on the balance of probabilities that the evidence placed before it supports the Respondent's contention that the appropriate Capital Value Assessment of the Subject Property at the AVD of 1st January 2005 is £320,000.00 and that the Appellant's evidence and submissions are not sufficiently persuasive to displace the statutory presumptions as referred to above.
- 7.9 Accordingly, the unanimous decision of the Tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland in respect of the Valuation of the Subject Property as contained in the Notice of Decision dated 20th December 2017 in the sum of £320,000.00 is upheld and the Appeal is dismissed.

Mr Alan Reid, Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 5th December 2018