

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: 13/18

JACK O'HARE - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President
Members: Mr E Spence and Mr G McKenna

Hearing: 6 February 2019, Belfast

DECISION

The unanimous decision of the tribunal is that the appeal is dismissed.

REASONS

Introduction

1. This appeal consists of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, by Notice of Appeal (Form 3) appealed against the decision of the Commissioner of Valuation in a Valuation Certificate dated 23 May 2018 in respect of the capital valuation of a hereditament situated at number 11 Donard Park, Ballaghbeg, Newcastle, County Down BT33 0WR ("the subject property"). By Order of the Tribunal dated 24 July 2018 time was extended to the appellant, until 11 July 2018, to deliver a Notice of Appeal in the matter.

2. The appellant, in making his appeal, indicated that he was content to have the appeal disposed of by written submissions. The Tribunal sat to hear the matter on 6 February 2019.

The Law

3. The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). As is now the case in all determinations of this nature, the tribunal does not intend in this decision fully to set out the detail of the statutory provisions of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, for the reason that these provisions have been fully set out in many previous decisions of this tribunal, readily available. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter. Antecedent valuation date or “AVD” is the date to which reference is made for the assessment of capital values in the Valuation List. Until a further domestic property revaluation occurs, capital values are, under the statutory regime, notionally assessed as at 1 January 2005, that being the AVD for the purposes of the domestic rating scheme. The legislation, at Schedule 12, paragraph 7 of the 1977 Order, as amended, provides that the capital value of a hereditament shall be the amount which, on the assumptions mentioned (materially in paragraphs 11 and 12 of Schedule 12, mentioned below), 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. The relevant paragraphs of Schedule 12 include the following statutory assumptions, which provide that –
 - The hereditament is sold free from any rentcharge or other incumbrance;
 - The hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality,
 - The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

The Issue to be Determined and the Evidence

4. The central issue in this case is encapsulated in the appellant's stated grounds of appeal where he states, "*The valuation of the property is far too high. I've had it valued @ £189,000 not the higher valuation from LPS*". Further light is shed upon the appellant's position in the Notice of Appeal to the Commissioner of Valuation where the appellant states, "*My house was valued at £189,000 and I have received a valuation from the rates team for £460,000. Please re-look at my case, as I'm sure this is too high*". Accordingly, as the appellant has sought to challenge the correctness of the capital value assessment, the issue for determination by the Tribunal is whether or not that assessment is correct or if it may be displaced. The Tribunal had before it the appellant's Notice of Appeal to the tribunal (Form 3) dated 9 July 2018 and documents provided included the following:-

- The Valuation Certificate dated 23 May 2018.
- The Time Extension Order of the Tribunal dated 24 July 2018.
- A copy of the appellant's Notice of Appeal to the Commissioner of Valuation (undated but received 21 June 2018).
- A document dated 6 November 2018 entitled "Presentation of Evidence" prepared on behalf of the Commissioner, as respondent, by Mr Gerard McGennity B.Sc. (Hons), M.Sc., MRICS and submitted to the tribunal.
- Copies of various communications to the Tribunal and between the appellant and on behalf of the respondent. It will be noted that the appellant did not seek to adduce any specific evidence in support of his appeal, nor did he seek to directly challenge in any of these communications the specific evidence concerning the comparable properties, as referred to below.

5. The subject property has been further described in Mr McGennity's Presentation of Evidence. It appears from the documentation that the appellant does take issue with the details provided in this document as far as the condition and characteristics of the subject property are concerned. The fundamental challenge in this appeal is whether the capital value accorded to the subject property is correct and accordingly the tribunal shall focus upon that issue. What is therefore not in issue is that the subject property is a privately built two-story house (constructed about 2017). It is located centrally in Newcastle Town, within Donard Park, accessed via Donard Forest Park. It is a substantial dwelling situated on a site comprising approximately 0.9 of an acre. The subject property has a Gross External Area ("GEA") of 502.4 m² with a separate detached garage of 60.3 m².
6. The material rating history concerning the subject property is that on 23 April 2018, the subject property was entered in the Valuation List with a capital value of £460,000. On 1 May 2018 the District Valuer's decision was appealed to the Commissioner of Valuation and a Certificate of Valuation was issued on 23 May 2018 which provided for no change in the Valuation List. This decision of the Commissioner of Valuation was then appealed to this Tribunal.

The Submissions of the Parties and the Tribunal's Consideration of the Issues

7. On behalf of the respondent, the Presentation of Evidence provides for submissions with a statement of the respondent's position in respect of this appeal. The contention on behalf of the respondent is that the valuation in respect of the subject property has been assessed in accordance with the statutory provisions. These include Schedule 12, Paragraph 7 of the 1977 Order which provides that (on the applicable assumptions) the capital value is the amount which 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. The relevant capital valuation date is 1 January 2005, otherwise known as the "antecedent valuation date" or "AVD". This important date is referred to further below. The statutory assumptions are provided for in the paragraphs 9 to 15 of Schedule 12. It is noted that the appellant has not sought to challenge any of these statutory provisions and their applicability to the subject property save to state that the capital valuation is excessive.

8. Notwithstanding the lack of specific challenge to this by the appellant, the tribunal considered the evidence concerning potentially comparable properties which is set forth in the Appendix to the Presentation of Evidence. This includes some colour photographs of the exterior of the subject property and summary details of the subject property and also brief particulars of five other properties which are stated to be comparable to the subject property. As mentioned, the appellant did not seek to challenge the comparability issue in respect of these five properties individually. Accordingly, the tribunal carefully considered any evidential material available from these matters.
9. The respondent's submitted comparables all are presumed to have unchallenged capital valuations (for that would have been otherwise stated if any such were to be under challenge). In addition to the subject property, the following five properties (with numbering ascribed from 2 – 6) with brief material particulars provided, are stated to be as follows:-

[No.2] 15 Donard Park, Ballaghbeg, Newcastle, County Down – privately built, post-1990, two-storey detached house, habitable space of 301.4 m², average repair, located in the same Council district (Newry, Mourne & Down) and Ward (Donard) as the subject property. The Capital Value is £250,000.

[No.3] 83 Tollymore Road, Carnacavill, Newcastle, County Down – privately built, post-1990, two-storey detached house, habitable space of 399.1 m², garage of 72.6 m², average repair, located in the same Council district as the subject property but in Murlough Ward. The Capital Value is £400,000.

[No.4] 23 Tollymore Road, Tollymore, Newcastle, County Down – privately built, post-1990, two-storey detached house, habitable space of 378.6 m², garage of 64.8 m², average repair, located in the same Council district as the subject property but in Murlough Ward. The Capital Value is £400,000.

[No.5] 39A Ballyloughlin Road, Ballyloughlin, Newcastle, County Down – privately built, post-1990, two-storey detached house, habitable space of 375.0 m², garage of

90.0 m², average repair, located in the same Council district as the subject property but in Murlough Ward. The Capital Value is £370,000.

[No.6] 24 Bryansford Avenue, Tollymore, Newcastle, County Down – privately built, post-1990, two-storey detached house, habitable space of 346.0 m², garage of 85.2 m², average repair, located in the same Council district as the subject property but in Murlough Ward. The Capital Value is £360,000.

10. The task of the tribunal in this appeal is to assess in the light of all the evidence and any objections on the part of the appellant the correctness of the capital value stated in the Commissioner's Valuation Certificate. Accordingly, the tribunal examined the evidence available from the Presentation of Evidence in the absence of the appellant putting forward any other specific evidence to challenge these stated comparables. The main thrust of the appellant's objection, insofar as it goes, is that the capital value is excessive. He states that his house was valued at £189,000. Although there is no valuation date provided by the appellant nor any further particulars of this stated valuation, it is probably safe to assume that this is a contemporary or a fairly recent valuation figure to which the appellant is alluding. The difficulty, however, faced by the appellant is that the tribunal is tasked, under the statutory provisions, to consider the comparative valuation of the subject property in reference to other potentially comparable properties. This comparison relates to values as at the "antecedent valuation date" (AVD), being 1 January 2005. The other properties listed in the Schedule to the respondent's Presentation of Evidence have also been assessed in reference to AVD values, not contemporary values. Although the concept of AVD-referenced valuations might be regarded by some as "out of date" there has been no domestic revaluation since January 2005. Accordingly, these are the capital valuations to which reference is properly made for statutory comparison purposes. For this reason, it is not permissible for the tribunal to scrutinise or consider contemporary or recent valuations. This may appear to be a somewhat artificial concept; indeed it is often misunderstood by appellants to the Tribunal. However, this constitutes the statutory basis upon which capital values in Northern Ireland are assessed for inclusion in the domestic Valuation List. Many previous decisions of the Tribunal have made observations concerning this matter. However the point, nonetheless and regrettably, appears to form the basis of a continuing misunderstanding.

11. In scrutinising the evidence, the Tribunal's view is that there appears to be a consistency, again in broad terms, between the characteristics of the subject property and the other stated comparables which, of itself, does not lend weight to the suggestion that the ascribed capital value of £460,000 is "out of tone".
12. As the tribunal has often observed in its decision-making, there exists a statutory presumption which is contained within the 1977 Order, Article 54(3). On account of this, any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown. In order to succeed in an appeal, any appellant must either successfully challenge and displace that statutory presumption of correctness or perhaps the Commissioner's decision on appeal, objectively viewed, must be seen by this tribunal to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the capital value to an appropriate figure.
13. The tribunal, in assessing this appeal, saw nothing in the general approach taken to suggest that this has been approached for assessment in anything other than the prescribed manner, as provided for in Schedule 12 of the 1977 Order. This being so, the tribunal examined the essential issue of whether or not the appellant had put forward sufficient challenge to the respondent's schedule of comparables and sufficient evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation.
14. The statutory provisions specify that the capital value of the property shall be the amount which (on the statutory assumptions) the property 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. Further, in estimating the capital value regard shall be had to the capital values of comparable properties in the same state and circumstances as the subject property. The tribunal, in conducting this exercise, gave full consideration to all of the evidence and argument including an analysis of the appropriateness of selection and the weight to be attached to the properties put forward as comparables.
15. The tribunal's unanimous decision is that the appellant has not put forward sufficient evidence and argument effectively to displace the statutory presumption of

correctness in respect of the capital valuation applied to the subject property. For that reason, the appeal cannot succeed and it is dismissed by the tribunal.

James V Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 27 March 2019