

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: 10/18

Brian Master of the BRIAN PORTER – APPELLANT

AND

COMMISSIONER FOR VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: James Leonard, President

Members: Mr E Spence MRICS and Mr G McKenna

6 February 2019, Belfast

DECISION

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

REASONS

1. This appeal consists of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, initially by Notice of Appeal (Form 9), appealed against the decision of the Commissioner of Valuation in a Valuation Certificate dated 16 April 2018 in respect of the capital valuation of a hereditament situated at number 68 Ravara Road, Ravara, Ballygowan, Newtownards BT23 6NN ("the subject property"). The appellant was informed that an incorrect Form of Appeal had been used and he subsequently submitted his appeal by Notice of Appeal (Form 3). By Order of the tribunal dated 6 June 2018 it was Ordered that time was extended to 31 May 2018 for the appellant to deliver a Notice of Appeal in the matter. The appellant requested an oral hearing and the tribunal sat to hear the matter on 6 February 2019.

The background to the appeal

2. The tribunal is entirely conscious of certain specific views and attitudes held by the appellant which are apparent both from the papers submitted to the tribunal and also from submissions and representations made by the appellant in the course of the oral hearing. It is perhaps necessary to mention at the outset that, in this tribunal decision, any terminology used which might offend against the appellant's views is entirely unintentional and is so employed for the reason that the tribunal can only have, in comparative terms, a relatively cursory and not any detailed comprehension of the philosophical and religious views and attitudes held by the appellant regarding certain issues which are clearly of significance and importance to him.

3. Appearing for the respondent in this appeal were Ms Gail Bennett and Ms Seline McClelland. At hearing, the appellant identified himself to the tribunal as "Brian Henry". He stated that he was the "Master of the Brian Porter" and that it was acceptable for the tribunal to address him as "Brian Henry" or alternatively as "Brian". Out of respect to the appellant, the tribunal proceeded to address the appellant in the manner desired by him throughout the course of the oral hearing. The appellant's title in these proceedings also, hopefully, will be in accordance with the manner in which he wishes to be described. The appellant was accompanied by a gentleman who identified himself as "David", but who declined to give any other identifying name. Also in the tribunal room throughout a part of the oral hearing was a gentleman who identified himself as "Anthony". He indicated that he was the "son of William" and he stated that he was attending in a private capacity only. This latter capacity is distinguishable from David, who it is clear attended in order to assist the appellant in the presentation of his case and with whom the appellant consulted from time to time as the oral hearing proceeded.

4. The appellant desired to commence the appeal hearing by advancing certain submissions concerning such matters as the jurisdiction of the Valuation Tribunal and his personal status in coming before the tribunal. However, as

the tribunal explained to the parties present, it was felt the better course, in terms of case management, to address specific issues requiring to be determined by the tribunal in an ordered and in a specific sequence. The appellant appeared to concur with the tribunal's suggestions as to how the hearing would be managed after the reasons for this were explained to him.

The Law

5. The statutory provisions which are relevant to the tribunal's determination 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.

6. A further issue in this case relates to rating exemption. The statutory provisions providing for a partial exemption from rates are to be found in Article 41 of the 1977 Order, materially Article 41 (2) and (8), which provide as follows:

“(1) Subject to the provisions of this Article, where the Commissioner or the district valuer is satisfied that a hereditament is a hereditament of a description mentioned in paragraph (2), he shall distinguish the hereditament, or cause it to be distinguished in accordance with paragraph (3).

(2) The hereditaments referred to in paragraph (1) are -

(a)....

(b) any hereditament which consists of either or both of the following-

(i) a church, chapel or similar building occupied by a religious body and used for the purposes of public religious worship;

(ii) a church hall, chapel hall or similar building occupied by a religious body and used for purposes connected with that body or for purposes of any charity;

together, in either case, with buildings ancillary thereto;

(c) any hereditament, other than a hereditament to which sub-paragraph

(b) applies, which

(i) is occupied by a charity; and

(ii) is used wholly or mainly for charitable purposes (whether of that charity or of that and other charities); ...

(8) A hereditament, or a distinct part of a hereditament, and interest in which belongs to, or to trustees for, a religious body and -

(a) in which (in right of that interest) -

(i) the persons from time to time holding any full-time office as clergyman or minister of any religious denomination, or

(ii) any particular person holding such an office,

have or has a residence from which to perform the duties of the office; or

(b) in which, (in right of an interest), accommodation is being held available to provide such a residence for such a person as is mentioned in sub-paragraph (a);

shall be treated for the purposes of this Article as occupied by a charity and used wholly for charitable purposes which are also domestic purposes, whether or not it would be so treated apart from this provision.”

The Issue to be Determined and the Evidence

7. The appellant in paragraph 5 of his Form of Appeal stated his grounds of appeal thus (here the tribunal has followed the use of capitals and lowercase but has been unable to replicate, in this decision, the appellant's use of red and black lettering; it may be taken that red lettering has been used throughout save where expressly mentioned by the tribunal):

“The validation of the original valuation application (please provide original application) at hearing To have our original Notice of removal of private home & place of the church as sanctuary removed from rating value list at our wish. or by religious exemption or exceptional circumstances. As Master & Beneficiary of the BRIAN PORTER (black lettering) estate trust, establish liability of DFP (black lettering) as trustees To establish jurisdiction of rates collection ie: commercial, Fleet Admiral Maritime, Military or at Common Law? and or all, conflicts of Interest.”

8. Accordingly, apart from certain fundamental jurisdictional matters raised by the appellant, the appellant has sought in this appeal to have the subject property removed from the Valuation List both at his own wish and, furthermore, on grounds of, as he puts it, "religious exemption or exceptional circumstances". He accordingly describes the subject property being as a private home and a place of church as sanctuary. The appellant in this appeal did not seek directly to challenge the comparative valuation method as it has been applied by the respondent to the subject property and to selected comparable properties introduced into evidence in the respondent's Presentation of Evidence. The tribunal shall refer to this latter dimension of the case further below.
9. The tribunal had before it the appellant's (initial and defective and then subsequent and effective) Notice of Appeal, dated 22 May 2018, to the tribunal (Form 3) and documents provided to the tribunal included the following:-
- The Valuation Certificate dated 16 April 2018, providing for a Capital Valuation of £250,000.
 - The tribunal's Time Extension Order dated 6 June 2018.
 - A document dated 6 July 2018 entitled "Presentation of Evidence" prepared on behalf of the Commissioner, as respondent, by Ms Seline McClelland B.Sc. (Hons), MRICS and submitted to the tribunal.
 - Copies of various communications and documents, including communications to the tribunal and between the appellant and on behalf of the respondent. These documents encompassed certain documents purporting to be formal notices directed, respectively, to the Minister for the Department of Finance and Personnel and the Chief Executive of Land and Property Services, and these included a notarised document of identification pertaining to the appellant. A copy of the Cestui Que Vie Act 1666 was also provided as an exhibit to the appellant's documentation. It will be noted that the appellant did not seek directly to challenge the respondent's specific evidence concerning the comparable properties, as referred to below.

10. In proceeding with the management of the hearing, the tribunal addressed firstly any evidence going towards a determination of the factual issue concerning occupancy of the subject property. The appellant was entirely forthright and candid in his evidence to the tribunal at all times. He explained to the tribunal that the subject property had been in the ownership and occupation of his immediate family for a lengthy period of time. It is understood that this was the family farm homestead and it is clear from the photographic evidence that the dwelling house is surrounded by a number of farm outbuildings. The appellant explained that the appellant's late mother had held ownership. Upon his mother's demise, the property had been left to him in his late mother's Will and there was a Grant of Probate issued whereby ownership of the subject property was transferred to the appellant. It is believed from the appellant's evidence that this was in or about 2011/12. The tribunal had noted a reference in the papers to some photographic evidence concerning the subject property emerging from an Ulster Property Sales brochure. The appellant explained to the tribunal that he had placed the subject property for sale with that agency in or about 2015 and indeed that the property was still on the market for sale by him. He did allude to some issues impeding the sale which do not directly concern the tribunal or this decision. He did also say that he was intending to repair some defects in the property and therefore it would probably not remain on the market for sale. Accordingly, on the basis of this evidence, the appellant appeared to accept both ownership and occupancy of the subject property, including the right to sell the subject property if he so desired.

11. The tribunal then addressed with the appellant some issues regarding his completion of the Form of Appeal. He had initially used Form 9, but when it was drawn to his attention that this was the incorrect form, he submitted his appeal in Form 3. On account of the appellant's beliefs and values (and here the tribunal does not distinguish between religious, philosophical, or other forms of belief or identification with any particular system of values - hereinafter collectively referred to as the "appellant's beliefs") the appellant completed the appeal Form in red pen and specifically in black lettering, with a

particular significance as far as the appellant's beliefs attaching to the use of lowercase letters and capitals and to the colour of writing. The tribunal permitted the appellant and the person who accompanied him to explain briefly to the tribunal why this was so. It has to be clearly stated that it shall not be the endeavour of the tribunal in this decision to provide a detailed, or indeed even a summary, explanation of the appellant's beliefs for the risk that these may be mis-stated, save to say that in advance of the hearing, in order to do justice to the matter and to set what the appellant had to say in some manner of context, the tribunal conducted some preliminary reading and accordingly had some basic understanding of matters. However, it is not the task of the tribunal to make any comment whatsoever upon the appellant's beliefs save in so far as the position adopted by the appellant might bear upon the tribunal's determination in this appeal. The tribunal's statutory function is to record the tribunal's conclusions of fact and determinations of law and the reasons for those conclusions in the application of the pertinent law to the facts. It is of course fully understood that the appellant may harbour a fundamental disagreement with the tribunal in respect of the application of what is regarded by the tribunal as being the relevant law properly to be applied to the determined facts. The Valuation tribunal is constituted as a statutory body empowered by the law to carry out its prescribed functions. The tribunal therefore proceeded with this appeal on that basis.

12. Turning then to the evidence concerning the appellant's occupancy and use of the subject property, the appellant resides in the subject property with his son. He regards the subject property as his home and a place of sanctuary. There is no evidence that the subject property is used as a place of formal worship by the appellant and by others in any organised manner such as, for example, by holding religious meetings or services at any specific time of the day, week or month, such as would normally be the case in a church premises or a religious meeting hall. The subject premises are certainly premises to which members of the public and others who adhere to the appellant's beliefs will call from time to time but, from the evidence, that is very much on an ad hoc basis and not in any organised or scheduled manner and there is no evidence

that any portion of the subject premises are set aside for the purposes of religious worship. When asked to describe the frequency of any meetings the appellant employed the phrase “now and again”. There is certainly no calendar or schedule of organised religious worship meetings. The appellant stated to the tribunal, “we pray in private” and together “on occasions”. It is accordingly clear that the subject property is not used, in the accepted sense, as anything akin to church premises. When the appellant was asked whether he had sought registration with the Charity Commission, he confirmed to the tribunal that that he had not, nor had he sought to make any charitable status arrangement with Her Majesty’s Revenue & Customs.

13. The appellant sought to advance arguments concerning breach of trust grounded upon his interpretation of the Cestui Que Vie Act 1666 which appears to form one of the cornerstones of the appellant’s system of beliefs. The appellant sought to challenge the status of the 1977 Order as having any jurisdiction whatsoever in the matter. He fundamentally rejected the entitlement of the state, generally, and the Department of Finance, Land and Property Services, and the Commissioner of Valuation, in particular, to engage in their prescribed activities as far as the subject property and the rating system is concerned, as a matter of law.

14. The subject property which had been assessed by the respondent had at a Capital Value of £250,000. As the appellant did not seek to challenge the comparative valuation method, the primary focus of the tribunal was upon the issue of whether there existed any exemption from rates under the statutory provisions. The tribunal therefore examined the effect of Article 41 (2) and (8) of the 1977 Order. For the purposes of Article 41 (2) the subject property would require to be a hereditament which consisted of either or both of the following- (i) a church, chapel or similar building occupied by a religious body and used for the purposes of public religious worship, or (ii) a church hall, chapel hall or similar building occupied by a religious body and used for purposes connected with that body or for purposes of any charity. The other possibility is that the subject property constitutes a hereditament which (i) is

occupied by a charity; and (ii) is used wholly or mainly for charitable purposes. Upon the appellant's evidence and the determined facts, the tribunal's conclusion is that the subject property does not fall within the ambit of any of these sub-categorisations contained within Article 41 (2).

15. That being so, does the subject property fall within Article 41 (8) of the 1977 Order? To do so, the subject property as a hereditament (or a distinct part of a hereditament), must have an interest which belongs to trustees for a religious body and relate to persons holding any full-time office as clergyman or minister of any religious denomination, or any particular person holding such an office and there must be a residence from which such clergyman or minister shall perform the duties of the office or in which accommodation is being held available to provide such a residence for such a person as is mentioned. If this is so, it shall be treated as occupied by a charity and used wholly for charitable purposes which are also domestic purposes. Again, upon the appellant's evidence and the determined facts, the tribunal's conclusion is that the subject property does not fall within the ambit of any of these provisions contained within Article 41 (8). This is the case as there is no compelling and persuasive evidence of an interest which belongs to trustees for a religious body and which relates to persons holding any full-time office as clergyman or minister of any religious denomination.

16. It was submitted on behalf of the respondent that the subject property was occupied by the appellant as his main residence and, as such, it could not be considered to fall under the description of a church, chapel or similar building. Any use of the subject property as a sanctuary where the appellant practised his faith was incidental to the residential use by the appellant and not the primary purpose of the occupation. It was not considered by the respondent to be occupied by a religious body and used for public religious worship. Furthermore, the appellant was not a minister or a clergyman nor did he hold the full-time office of any religious denomination. The Valuation Tribunal case of ***Legge v Commissioner of Valuation [NIVT 20/16]*** was referred to in the

respondent's submission and it was considered that the usual meaning of holding an "office" is to be holding a position of authority or responsibility for a job in an organisation or a religious denomination. Therefore the statutory exemption did not apply, so it was submitted.

The Tribunal's Decision

17. The tribunal notes that the respondent's submission referred to the Valuation tribunal case of ***Legge v Commissioner of Valuation***. The tribunal entirely concurs with the interpretation of the law as set forth in that case and it provides a helpful explanation of the proper focus in cases of this type. It is unnecessary in this decision to repeat that detailed analysis, but the tribunal took that into account in reaching its determination in this case. Taking account of all of the evidence, the tribunal's determination is that the exemptions comprised in Article 41 of the 1977 Order do not apply in this case. The subject property is not fully or partially exempt from rating.

18. Having made this determination, notwithstanding the appellant failing to specifically challenge this aspect of the matter, the tribunal nonetheless regards it as its duty to determine whether or not the capital value of the subject property has been correctly assessed by means of the statutory method of comparison. In that regard the tribunal examined the Schedule of Comparisons set forth in the respondent's Presentation of Evidence. Here, there are listed the subject property with its specific characteristics and circumstances, together with four other properties which have been used by the respondent for comparison purposes. The essential characteristics of most of these are rather similar. The tribunal conducted an analysis of the circumstances and characteristics and the ascribed capital values of the subject property and these comparisons. The tribunal observed nothing indicating that the capital valuation of the subject property was "out of tone", given the locality and circumstances. The four other properties used for comparison purposes to the subject property were as follows:-

- 66 Ravara Road. Capital Valuation of £290,000 (adjusted to £232,000 on account of agricultural use);
 - 55 Ravara Road. Capital Valuation of £280,000 (adjusted to £224,000 on account of agricultural use);
 - 38 Ravara Road. Capital Valuation of £300,000 (described as having difficult access);
 - 74 Ravara Road. Capital Valuation of £320,000.
19. There exists a statutory presumption within the 1977 Order, Article 54(3) that any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown. The tribunal 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 (indeed in the absence of any specific challenge to the comparative valuation method) 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.
20. 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.

Mr James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 13th March 2019