

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: 27/17

KEN SAYERS - 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 19 December 2017 in respect of the capital valuation of a hereditament situated at number 6 Ashburn Park, Eglinton, Londonderry BT47 3AJ ("the subject property").
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 primary issue in this case relates to a long-running dispute on the part of the appellant concerning the measurement of the subject property. In his appeal form the appellant states, "*On the survey, carried out on 9/4/09 a new block 6 was added. This is incorrect as this area of my property did not change from the previous survey.*"

If there was a new block 6 I would need to have planning permission and also building control approval. Also the measurement of block 6 was an internal measurement. This was confirmed by your own Niall McGrath.” This tribunal notes that this is not a new issue, nor is this the first time that the appellant has appealed to the Valuation Tribunal. The appellant had previously appealed to the Tribunal concerning the subject property and by decision numbered 36/09 the Tribunal refused the appellant's appeal against the decision of the Commissioner of Valuation concerning the subject property. There was indeed an endeavour to make a subsequent appeal to the Lands Tribunal, which was unsuccessful.

5. The rather lengthy history of the matter appears from the respondent's Presentation of Evidence. On 17 April 2009 an application was submitted by the appellant to the District Valuer. Upon inspection, the Capital Value was revised by the District Valuer from £130,000 to £125,000 with effect from 1 April 2007 and a Valuation Certificate was issued on 29 April 2009. In April 2009, a further case was registered to take account of property extensions that had been noted in the previous case. As a consequence, the Capital Value was revised to £150,000 to reflect extensions, including a small utility room to the rear of the garage and a conservatory to the rear of the subject property. In May 2009 the decision of the District Valuer was appealed to the Commissioner of Valuation by the appellant on the basis that the subject property was measured incorrectly at a Gross External Area (GEA) of 166 m², whereas the appellant contended that this should be 144 m². The appeal valuer conducted a survey and concluded that the stated GEA was correct and, accordingly, no change was made to the Capital Value as a result. A Valuation Certificate issued on 3 September 2009. In September 2009 the decision of the Commissioner of Valuation was appealed to the Valuation Tribunal and in a written decision the appeal was dismissed for the reasons stated. In the course of that appeal the tribunal fully considered and addressed the arguments advanced by the appellant concerning what may be termed the “GEA issue”. In April 2010 the decision of the Tribunal to dismiss the appeal was sought to be appealed to the Lands Tribunal, the appellant having been refused leave to appeal by the Valuation Tribunal President. The appellant made an application for Leave to Appeal to the Lands Tribunal, which was heard by the Member, Mr Curry FRICS, who refused leave to appeal by a decision dated 2 June 2010. The appellant has now made a

subsequent appeal and he now seeks to rehearse similar arguments to those made by him previously, whereby he disputes the GEA measurements obtained on behalf of the respondent.

6. The Tribunal had before it the appellant's Notice of Appeal to the Tribunal (Form 3) dated 9 January 2018 and documents provided included the following:-

- The Valuation Certificate dated 19 December 2017 (indicating the previous valuation of the subject property at £150,000 with no revision of that valuation and thus being confirmed that the same figure of £150,000).
- A document dated 21 August 2018 entitled "Presentation of Evidence" prepared on behalf of the Commissioner, as respondent, by Ms Wendy Marshall 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.

7. The subject property has been further described in Ms Marshall's Presentation of Evidence. Of particular note is the commentary regarding inspection of the subject property on behalf of the respondent. This records an inspection conducted on 14 December 2017 and makes a commentary upon the contentions advanced by the appellant that the assessed GEA of 166 m² is incorrect. The commentary deals with the argument by the appellant that what is termed "block 6" was double-counted. The appellant's contention is referred to that a survey was carried out by an independent professional surveyor on behalf of the appellant which measured the GEA at 158 m². The Presentation of Evidence alludes to the fact that there has been substantial correspondence between Land and Property Service (LPS) and the appellant regarding this GEA issue and indeed that a response was made to the appellant on 6 June 2011 indicating that the subject property had (by that time) been checked on three separate occasions by three experienced staff from LPS and had been found to be correct on each occasion and, indeed, that it had also been checked personally by the Commissioner of Valuation.

8. Leaving to one side, for a moment, this GEA issue, the appellant has also raised some specific issues which have been the subject of further commentary on the part of the respondent and the tribunal has noted these issues and submissions and the commentary, for example, that the garages at numbers 2, 4 & 6 Ashburn Park are not identical. In this appeal it is clear that the fundamental issue relates to a dispute concerning the accuracy of the GEA assessment and the consequence as far as the Capital Value assessment is concerned.
9. The matter may be easily addressed by the Tribunal. This is a case where the GEA issue has been carefully considered by a previous Valuation Tribunal and has been checked on a number of occasions by experienced valuers and also by the Commissioner of Valuation in person. Against this there is no professional survey report produced in evidence in aid of the appellant's case; there are no detailed maps or measurements, conclusively demonstrating anything to the contrary, to set against the weight of the evidence emanating from the respondent. These matters of evidence are to be determined upon the civil standard of proof, in other words upon the balance of probabilities. The appellant has made endeavours over a considerable period of time to advance his arguments on the GEA issue with the District Valuer and the Commissioner of Valuation and also with an earlier Valuation Tribunal, and indeed with the Lands Tribunal. In all of these endeavours, the appellant has been unsuccessful to date.
10. Taking account of all the available evidence, the Tribunal does not accept, as a matter of fact, that there has been any error in the GEA assessment on the part of the respondent. The appellant's contentions in this respect are therefore not upheld by the Tribunal.
11. On behalf of the respondent, the Presentation of Evidence advances the respondent's submissions, with the contention 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". The statutory assumptions provided for in the paragraphs 9 to 15 of

Schedule 12 are mentioned. The appellant has not sought to challenge any of these statutory provisions and their applicability to the subject property save to state that the GEA has been incorrectly assessed, with a subsequent effect on the capital valuation, as far as the appellant is concerned.

12. The tribunal considered the evidence concerning potentially comparable properties 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 three other properties in close proximity which are stated to be comparable to the subject property. The tribunal carefully considered any evidential material available from these.

13. The respondent's submitted comparables all are presumed to have unchallenged capital valuations and are all located adjacent one to the other. In addition to the subject property, the following three properties (with numbering from 2 – 4) are stated to be as follows:-

[No.2] 5 Ashburn Park, Eglinton, County Londonderry. The Capital Value is £155,000.

[No.3] 4 Ashburn Park, Eglinton, County Londonderry. The Capital Value is £155,000.

[No.4] 2 Ashburn Park, Eglinton, County Londonderry. The Capital Value is £140,000.

14. The tribunal's task is to assess, in the light of all of the evidence, 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 scrutinising the evidence, the Tribunal's view is that there appears to be a consistency between the characteristics of the subject property and the other stated comparables which, of itself, does not lend to the suggestion that the capital value of £150,000 is "out of tone".

15. 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.
16. The tribunal, in considering this appeal and in accepting the correctness of the assessed GEA, 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.
17. 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. It is hoped that this decision will be accepted by the appellant as being a final determination of this long-running matter.

James V Leonard, President
Northern Ireland Valuation Tribunal

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