

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

CASE REFERENCE NUMBER: 01/08

JOHN LIGGETT- APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mrs Siobhan Corr FRICS and Mr Peter Somerville.

Belfast, 30 May 2008

DECISION

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 14 February 2008 is upheld and the appellant's appeal is dismissed.

REASONS

Introduction

This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, Mr Liggett, appeared and represented himself and Mrs Claire White and Mr Paul Boylan represented the Commissioner as respondent.

The appellant, by appeal form dated 5 March 2008 appealed against the decision of the Commissioner of Valuation for Northern Ireland ("the Commissioner") on appeal dated 14 February 2008 in respect of the valuation of a hereditament situated at 76 Madden Road, Tandragee, County Armagh BT62 2DJ. At the commencement of this hearing, the appellant indicated that, until shortly before the commencement of the hearing, he had not had sight of the respondent's documentation entitled "Presentation of Evidence". The tribunal expressed some concern at that fact and at the possibility that the appellant might have been placed under a significant disadvantage in that regard. Thus the tribunal indicated that if the appellant either wished for more time to consider the documentation or, indeed, to apply to adjourn the matter, the tribunal was quite prepared to accommodate the appellant in that regard. However, after some discussion, the appellant indicated that, in view of the nature of the specific case that he wished to present, he wished the hearing to proceed. He would reserve his position regarding the possibility of applying for an adjournment once he had heard the respondent's case argued. After some further discussion and the tribunal having explained to and discussed with the appellant various issues arising from the foregoing, on the basis of the appellant's decision in that regard, the hearing proceeded. After conclusion of the respondent's case, the appellant then indicated that he did not require any further adjournment nor indeed any more time to consider his position; he was content for the tribunal to proceed to make its decision on foot of the evidence and the arguments that had been advanced in the course of the hearing.

THE LAW

The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). Article 8 of the 2006 Order amended Article 39 of the 1977 Order (the basis of valuation) as follows:-

"8. —(1) In Article 39 of the principal Order (basis of valuation), for paragraph (1) there shall be substituted the following paragraphs—

" (1) - .

(1A) For the purposes of this Order the following hereditaments shall be valued upon an estimate of their capital value—

(a) any dwelling-house;

(b) any private garage;

(c) any private storage premises.

(1B) -.

(1C) -.

(2) In Part I of Schedule 12 to the principal Order (basis of valuation), after paragraph 6 there shall be inserted the following paragraphs—

" Capital value – general rule

7. —(1) Subject to the provisions of this Schedule, for the purposes 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.

(2) 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.

(3) The assumptions mentioned in paragraphs 9 to 15 shall apply for the purposes of determining whether one hereditament is a comparable hereditament in the same state and circumstances as another with the omission of sub-paragraphs (2) and (3) of paragraph 12.

(4) In sub-paragraph (1) "relevant capital valuation date" means 1st January 2005

Capital value – the assumptions

8. In this paragraph and paragraphs 9 to 15—

"development" has the meaning given by Article 2(2) of the Planning Order;

"flat", in relation to a building, means a dwelling which is a separate set of premises, whether or not on the same floor, divided horizontally from some other part of the building;

"incumbrance" means any incumbrance, whether capable of being removed by the seller or not, except service charges;

"permitted development" means development for which planning permission is not required or for which no application for planning permission is required;

"Planning Order" means the Planning (Northern Ireland) Order 1991 (NI 11);

"planning permission" has the meaning given by Article 2(2) of the Planning Order;

"rentcharge" has the meaning given by section 27(1) of the Ground Rents Act (Northern Ireland) 2001 (c. 5).

9. The sale is with vacant possession.

10. The estate sold is the fee simple absolute or, in the case of a flat, a lease for 99 years at a nominal rent.

11. The hereditament is sold free from any rentcharge or other incumbrance.

12. —(1) 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.

(2) The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

(3) In sub-paragraph (2) "relevant date" means 1st April 2007 or such date as the Department may substitute by order made subject to negative resolution for the purposes of a new capital value list.

13. The hereditament has no development value other than value attributable to permitted development.

14. —(1) A hereditament falling (or deemed to fall) within any sub-paragraph of Article 39(1A) will always fall within that sub-paragraph.

(2) A hereditament falling (or deemed to fall) within paragraph (1B) of Article 39 will always fall within that paragraph.

15. —(1) There has been no relevant contravention of—

(a) any statutory provision; or

(b) any requirement or obligation, whether arising under a statutory provision, an agreement or otherwise.

(2) In sub-paragraph (1) "relevant contravention" means a contravention which would affect the capital value of the hereditament."

The 2006 Order also amended the 1977 Order (regarding appeals) as follows:-

“Appeals from the Commissioner

33. For Article 54 of the principal Order there shall be substituted the following Articles—

" Appeal from decision of Commissioner

54. —(1) Any person, other than the Department, who is aggrieved by—

(a) the decision of the Commissioner under Article 49A or on an appeal under Article 51; or

(b) an alteration made by the Commissioner in a valuation list in consequence of such a decision,

may appeal to the appropriate Tribunal.

(2) On an appeal under this Article the Tribunal may—

(a) make any decision that the Commissioner might have made;
and

(b) if any alteration in a valuation list is necessary to give effect to the decision, direct that the list be altered accordingly.

(3) 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.

(4) In this Order "the appropriate Tribunal" means—

(a) in relation to such appeals as may be prescribed, the Valuation Tribunal;

(b) - . "

THE EVIDENCE

The appellant gave oral evidence and produced photographs and documents to the tribunal. The tribunal had before it the appellant's form of appeal to the tribunal (Form 3) and copies of various documents including the following:-

1. The Commissioner's Decision on Appeal dated 14 February 2008.
2. A document entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Land and Property Services and submitted to the tribunal for the purposes of the tribunal hearing.
3. Correspondence between the tribunal and the parties.
4. Copy photographs of various properties submitted by the appellant.

THE FACTS

On the basis of such information as was before it the tribunal determined, upon the balance of probabilities, the following facts:-

1. The hereditament consists of a dwellinghouse situated at number 76 Madden Road, Tandragee, County Armagh BT62 2DJ ("the property"). The property is situated adjacent to a farmyard with agricultural buildings which serves a farm of land belonging to the appellant. The property is occupied by a tenant under a tenancy. The appellant is the ratepayer.
2. The property is a detached chalet bungalow of brick and concrete block with tiled pitched roof and single garage. It is situated off a tarmac lane which leads off the main Madden Road approximately one and one half miles from Tandragee. The property has mains electric and water services, a private septic tank system and oil fired central heating. It was constructed around 1981 and has a gross external area of 170 m². The garage has a gross external area of 28m². There are no other residential properties in the immediate locality.
3. The background to the matter appears to be that, upon a tenancy of the property being created by the appellant, the property no longer qualified to be treated as a farmhouse in accordance with Part II of Schedule 12 to the 1977 Order. In her

evidence to the tribunal, Mrs White clarified that there was a policy of capital value adjustment of farmhouse properties which met the foregoing statutory criteria contained in Part II of Schedule 12 to the 1977 Order by applying a reduction of 20% to any such properties in the valuation list. The property did not qualify for that reduction. However, taking into account the particular situation of the property (more of which below) an allowance of 10% had been applied in arriving at the subject capital value of £152,500 at Antecedent Valuation Date, that date of course being 1 January 2005 ("AVD"). Thus it was argued that, without this allowance of 10% being applied, the applicable capital value would have been £170,000.

4. In her "Presentation of Evidence" Mrs White provided summary details of five properties all situated within a three mile radius of the property and stated to be comparable to the property for valuation purposes. These included three capital value assessments which were stated to be "unchallenged" and two sales. It is unnecessary to go into the details in respect of these in this decision for the reason that the appellant made clear to the tribunal that these comparables were not specifically challenged by him. Indeed the appellant stated that he took no issue whatsoever with a capital value assessment in respect of the property of £170,000 if the property had been differently located. He clarified that his appeal was entirely in respect of the particularly disadvantaged location of the property; that was the only reason why he felt that the capital value as assessed by the Commissioner was significantly higher than the property would have fetched in an open market sale at AVD.

5. The foregoing being the case, the Tribunal was able to narrow down the factual issues for consideration significantly and the Tribunal did not need to determine any further findings of fact for the purposes of making its decision in this case.

THE APPELLANT'S SUBMISSION

The appellant made the submission that the tribunal properly has to have regard to the fact that this is a property situated in a very significantly disadvantaged location and that fact ought to significantly reduce the capital value. The appellant indicated that he farmed the adjoining lands and used the agricultural sheds and outbuildings (these can clearly be seen

from the photographs supplied) situated immediately adjacent to the property. There are no other residential properties in the immediate locality. The property can only be reached by travelling along a lengthy laneway that serves only to access the property and the adjacent farm buildings. The appellant suggested to the tribunal that he had encountered some difficulty in finding a tenant for the property. Now there was a tenant residing in the property. However, it would be rather difficult to market the property for sale without also selling the entire farm.

In support of his submission the appellant produced letters from two local estate agents. The first of these, Next Move Property Sales of Tandragee, by letter dated 27 March 2008 stated that the property was located in the middle of a working farmyard and therefore would be difficult to sell and would not be marketable on its own and could only be a let property. No capital value was suggested. The second consisted of a letter dated 27 March 2008 from Smyth Properties of Tandragee that stated that the dwelling was situated approximately 1.5 miles from the town (of Tandragee). It had been built about 35 years before specifically as a farm dwelling. It was therefore a part of the farmyard with all of the inherent disadvantages. In Mr Smyth's opinion, that left the property unsuitable as far as investment value was concerned. The dwelling also required considerable updating of the kitchen and bathroom etc. The market value at 1 January 2005 (AVD) was stated to be £75,000.

The appellant in his representations has made it entirely clear that if the property were to be located (as were some properties in respect of which the appellant very helpfully produced photographs to assist the tribunal) close to a main road with a road frontage and agricultural buildings situated only to the side or to the rear of the property, he would not question in any way a capital value of £170,000 being applied to the property. His argument thus was entirely about the situation of the property and nothing more than that.

THE TRIBUNAL'S DECISION

Article 54 of the 1977 Order enables a person to appeal to the tribunal against the decision of the Commissioner on appeal as to capital value. In this case the capital value has been assessed at AVD at a figure of £152,500. On behalf of the Commissioner it has been contended that that figure is fair and reasonable in comparison to other properties and the statutory basis for valuation has been referred to and especially reference has been made

to Schedule 12 to the 1977 Order in arriving at that assessment. It is to be noted that there is an important statutory presumption contained in Article 54(3) of the 1977 Order which 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*". It is therefore up to the appellant in any case to challenge and to displace that presumption, or perhaps for the Commissioner's decision to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.

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 in anything other than the prescribed manner provided for by Schedule 12, paragraphs 7 (and following) of the 1977 Order. Indeed the appellant took no issue in respect of the capital value save as regards the particularly disadvantaged circumstances which he has argued applied to the property.

As there is nothing wrong per se with the Commissioner's approach, the tribunal considered whether the appellant had satisfactorily argued a case to displace the statutory presumption. The argument made by the appellant is really quite straightforward. The single issue for the tribunal to consider is whether or not the 10% reduction in the capital value that has actually been applied to the property in this case properly reflects a fair and true assessment of the capital value of the property, situated as it is in a somewhat disadvantaged location.

For the Commissioner, it is argued that the reduction already granted properly reflects the particular situation of the property. Indeed it is argued that the maximum capital value reduction which would otherwise have been applicable to the property (had it been situated in the middle of a working farm and had the benefit of the statutory provisions contained in Part II of Schedule 12 to the 1977 Order) would have been 20% and no more. Against that, the appellant argues that the capital value ought to be very significantly lower and in his appeal he suggests a capital value of £60,000 - £80,000.

The report dated 27 March 2008 from Next Move Property Sales is not particularly helpful as this merely states that the property would be difficult to sell and would not be marketable on its own; no capital value is suggested. The second report, that dated 27 March 2008 from Smyth Properties, suggests a capital value at AVD of £75,000. There is no additional detail provided in that report as to how the figure of £75,000 is arrived at, nor any hint as to

the valuation mechanism employed in assessing such a figure. The report indeed makes comment upon the property requiring considerable updating to kitchen, bathroom etc. However, as is mentioned above, regarding that latter observation there is a statutory assumption that 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 tribunal has no way of ascertaining how that latter consideration might have affected the suggested valuation figure.

In contrast to this, the tribunal is rather more persuaded by the evidence and submission made on behalf of the Commissioner to the effect that, having taken account of the full range of the disadvantages affecting any dwellinghouse that is situated in the middle of a working farm (noise, smell, dangers from agricultural equipment etc.) a capital value reduction of 20%, at maximum, is properly applicable in cases which properly qualify under the statutory provisions. From the submission made on behalf of the Commissioner, it is understood that that figure of 20% has been arrived at after considerable discussions and negotiations with various agricultural and farming interests, including Ulster Farmers' Union representatives, and it is generally regarded as being fair and reasonable, taking everything into account. However, the appellant argues for a reduction of something more in the order of 50 - 60%. Having made that argument, the appellant has not supported his case with anything other than a valuation report from a local estate agent, Mr Smyth, which report regrettably does not assist the tribunal by indicating precisely how the suggested valuation figure of £75,000 has been assessed.

THE TRIBUNAL'S CONCLUSION

The tribunal is very grateful to the appellant, Mr Liggett, for taking the time to come to the tribunal and to present his evidence and arguments in such a clear and forthright manner. Nonetheless, examining the facts of the matter and the arguments and submissions, the tribunal's unanimous decision is that the appellant has failed to displace the statutory presumption. The tribunal is of the view that the reduction of 10% that has already been afforded, given the particular circumstances of this property, is fair and reasonable. Thus the Commissioner's Decision on Appeal is upheld and the appeal is dismissed.

**Mr James V Leonard, President
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: