

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

CASE REFERENCE NUMBER: 21/08

IAN LOCKINGTON - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Alan Reid

Members: Mr Bill Deddis and Mr Ronald Orr

Belfast, 8th December 2008

DECISION

The unanimous decision of the Tribunal is that the appeal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 22nd July 2008 is allowed and that the Capital Value of the property at 19 Glenmachan Drive, Ballymachan, Belfast BT4 2RE be assessed at £320,000.00 and the Tribunal directs that the Valuation List be altered accordingly.

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 13th August 2008 the Appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland ("the Commissioner") dated 22nd July 2008 in respect of the Valuation of a hereditament situated at 19 Glenmachan Drive, Ballymachan, Belfast BT4 2RE.
- 1.3 The Appellant, Mr Lockington, appeared and represented himself. Ms Gail Bennett accompanied by Mr Martin McGrath appeared for and represented the Commissioner as Respondent.

2. 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"). It is perhaps desirable to set out some detail in respect of the statutory provisions applicable to the basis for valuation and the mechanism for appeals to this tribunal in this type of case. Material to the case, 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 subparagraph 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) “

3. The Evidence

- 3.1 The Tribunal had before it the Appellant's Notice of Appeal dated 13th August 2008 and copies of various documents including:-
- The Commissioner's Decision on Appeal dated 22nd July 2008
 - A document entitled "Presentation of Evidence" submitted on behalf of the Commissioner by Ms Gail Bennett of Land and Property Services
 - A letter dated 3rd December 2008 from Ms Bennett to the Tribunal making reference to a recent Decision of the Tribunal on appeal in respect of the property at 21 Glenmachan Drive, Belfast
 - A letter dated 14th August 2008 from BTW Cairns Estate Agents to the Appellant
 - Correspondence between the Tribunal and the Parties.
- 3.2 At the commencement of the hearing of the Appeal both parties confirmed that all of these documents had been provided to each of them and that they had had an opportunity to consider them prior to the hearing.

4. The Facts

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

- 4.1 The hereditament is a detached dwellinghouse situated at 19 Glenmachan Drive, Ballymachan, Belfast BT4 4RE ("the Subject Property"). The

Subject Property was stated to be owned by the Appellant who the Tribunal understood to be the rate payer.

- 4.2 The Subject Property is a detached house situated in a residential development comprising similar properties in the eastern suburbs of Belfast. It is of brick construction with a tiled roof and comprises a hall, two receptions and a kitchen on the ground floor with four bedrooms and a bathroom on the first floor. The property has all mains services and central heating throughout. The Subject Property has a gross external area ("GEA") of 175 m². In addition it has a double garage.
- 4.3 The Capital Value Assessment of the Subject Property is £330,000.00 at the Antecedent Valuation Date ("AVD") that date being 1st January 2005. In arriving at that Capital Value Assessment figure regard was had to assessments in the Valuation List of properties considered comparable and also to market sales of certain properties in the general locality. . These comparables were set out in a Schedule to the "Presentation of Evidence" submitted on behalf of the Commissioner. There were a total of three comparables. Further particulars of the comparables were provided together with photographs of two of them and two of the comparables also had related sales particulars.
- 4.4 The Capital Value Assessments of two of the comparables had been agreed with the occupiers on review. The Capital Value Assessment of the third comparable was unchallenged.

5. The Appellant's Submission

The Appellant, in summary, has made the following submissions:-

- 5.1 He had purchased the Subject Property on the Open Market in August 2005 for £330,000.00. It had initially been marketed by the Selling Agents on 16th May 2005 with an asking price of £325,000.00. He had secured the purchase of the property by outbidding the previous highest bidder by £10,000.00 before going abroad on 9th June 2005. This substantially higher bid had been placed by him in an effort to ensure that it would be accepted before he went abroad as he would be out of contact with the Selling Agents whilst abroad. The purchase had been completed on 9th August 2005.
- 5.2 The Appellant was of the view that this open market value in August 2005 should be used as a starting point to determine the valuation at 1st January 2005. He submitted however that there had been significant house price inflation during 2005 and that therefore a value in August 2005 would be in excess of the value as at 1st January 2005.
- 5.3 The Appellant supported his contention regarding house price inflation by reference to the University of Ulster/Bank of Ireland quarterly house price index for the third quarter of 2005. This indicated that the annual increase in detached house values in the North Down/Belfast Metropolitan area

was 34.14%. This covered the twelve month period from 1st October 2004 to 30th September 2005. Apportioning this 34.14% increase for the eight month period from 1st January 2005 to late August 2005 in the Appellant's submission resulted in an increase over that period of 22.76% (that is, 8/12 of 34.14%). The Appellant's submission was that an increase of 22.76% in the value of the Subject Property from 1st January 2005 to late August 2005 would indicate a valuation of the Subject Property at 1st January 2005 in the sum of £268,817.00 as the open market value in August 2005 was £330,000.00.

- 5.4 The Appellant also suggested that where there had been two consecutive sales of a comparable property this would be indicative of the extent of the rise or fall in prices of similar properties in the locality. One of the comparables included in the Commissioner's "Presentation of Evidence" was the property at No 8 Glenmachan Drive. This property had been sold for £340,000.00 on 13th September 2005 and the Appellant's submission (which was not contradicted by the Commissioner's representatives) was that this property was the subject of a further sale on 16th February 2007 for £525,000.00. It was the Appellant's submission that this was indicative of very significant house price inflation in the locality.
- 5.5 In relation to the comparable properties referred to in the Respondent's "Presentation of Evidence" the Appellant argued that the property at 2 Glenmachan Drive has a larger first floor than the Subject Property. Otherwise the Respondent did not challenge the Capital Values or particulars of the comparable properties.

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 and in particular paragraphs 7 and 9-15 inclusive of Schedule 12 of the 1977 Order. In doing so, the requirement in Schedule 12 that "regard shall be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances" had been duly observed.
- 6.2 It had been established that the £330,000.00 bid for the Subject Property had been made in May 2005. This was the Appellant's bid. Ms Bennett suggested that the bid was what the Appellant regarded as a reasonable value for the property at that time. She speculated that as there were other properties on the market in the locality at that time this might have influenced the Vendor of the property to accept the Appellant's bid rather than to hold out for a higher offer.
- 6.3 Ms Bennett felt that the Capital Value of the Subject Property, when compared to the comparables put forward, was reasonable. The property at 8 Glenmachan Drive having a GEA of 184 m² was £340,000.00. The

Capital Value of No 2 Glenmachan Grove with a GEA of 196 m² was £350,000.00. Both of these properties are somewhat larger than the Subject Property and both have double garages and (in the case of No 2 Glenmachan Grove) a conservatory. No 2 Glenmachan Drive is of identical size to the Subject Property and also has a double garage. It has the same Capital Value of £330,000.00.

- 6.4 Ms Bennett argued that the proper basis of the valuation is a comparison with Capital Values of other properties in the same state and circumstances as the Subject Property in accordance with the legislation. She argued that regard should not be had to house price indices prepared over larger geographical areas. She accepted however that the sales comparisons used were all in respect of sales which took place some time after the AVD of 1st January 2005. She made reference to the recent Decision of the Tribunal (constituted differently from this Tribunal panel) in the appeal of Mr and Mrs Haire in relation to their property at 21 Glenmachan Drive which was immediately adjacent to the Subject Property. In that case the Tribunal had accepted that the house price indices were evidence of inflation generally during 2005. Ms Bennett accepted on behalf of the Respondent that this did indicate that the Capital Value of the Subject Property in August 2005 at £330,000.00 was likely to have been higher than at the AVD of 1st January 2005. She noted that in the Haire case the Tribunal had reduced the Capital Value Assessment of 21 Glenmachan Drive at the AVD of 1st January 2005 from £350,000.00 to £340,000.00 noting that this represented a reduction of some 2.8%
- 6.5 Ms Bennett conceded on behalf of the Respondent that some reduction in the Capital Value Assessment of the Subject Property would be appropriate to take account of the inflationary factors referred to above for the period 1st January 2005 to August 2005. She made reference to the comparative GEAs of the Subject Property, the comparables and the property at 21 Glenmachan Drive. The latter has a GEA of 197 m² (including a roof space conversion of 22 m²) and it also has a conservatory. The Subject Property has a GEA of 175 m². She was of the view that a reduction of the Capital Value Assessment of the Subject Property from £330,000.00 to £320,000.00 would therefore be appropriate.

7. The Tribunal's Decision

- 7.1 The Tribunal thanks the parties for their reasoned submissions and their courteous appearances before the Tribunal.
- 7.2 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 the AVD at a figure of £330,000. 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.

- 7.3 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*". It is therefore up to the Appellant 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.
- 7.4 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. The statutory mechanism has been expressly referred to in the Commissioner's Submissions to the Tribunal and the Tribunal notes the evidence submitted as to comparables and concludes that the correct statutory approach has been followed in this case in assessing the Capital Value.
- 7.5 The Tribunal must then consider whether the evidence placed before it or the arguments made by the Appellant are sufficient to displace the statutory presumption. Those arguments have been summarised above. Essentially, they focused on the question of the extent to which the Capital Value of the Subject Property had increased between 1st January 2005 and 9th August 2005 when the Appellant had completed his purchase of the Subject Property. He did not seek to challenge the Capital Value Assessments of any of the comparables at 8 Glenmachan Drive, 2 Glenmachan Grove or 2 Glenmachan Drive referred to on behalf of the Commissioner.
- 7.6 The Tribunal accepts the Appellant's general contention that the University of Ulster/Bank of Ireland House Price Index demonstrates that there was significant house price inflation in the property market in the first half of 2005. However, it does not accept that the particular percentage figures for that house price inflation can then simply be applied to an individual property to arithmetically determine the precise increase in value of that particular property for any specific period.
- 7.7 The Appellant additionally sought to argue that as the comparable property at 8 Glenmachan Drive had been sold on the Open Market for £340,000.00 on 13th September 2005 and sold again on the Open Market seventeen months later on 16th February 2007 for £525,000.00 that increase in value could somehow be referred back to reflect the extent of the increase in value of the Subject Property between 1st January 2005 and 9th August 2005. The Tribunal does not accept that submission. The increase in value of 8 Glenmachan Drive between September 2005 and

- February 2007 may well be evidence of an increase in value of the Subject Property during that period but that is not relevant to a determination of the Capital Value of the Subject Property eight months before 9th August 2005 at the AVD of 1st January 2005.
- 7.8 It was accepted on behalf of the Commissioner by Ms Bennett that a reduction in the Capital Value Assessment was appropriate to take account of an increase in value of the Subject Property between 1st January 2005 and 9th August 2005. She suggested a reduction from £330,000.00 to £320,000.00 would be appropriate. She made reference to the fact that the reduction directed by the Tribunal in its Decision relating to No 21 Glenmachan Drive had been of the order of 2.8%. The Tribunal specifically sought clarification from Ms Bennett in relation to whether or not she was suggesting that the percentage reduction applied in respect of 21 Glenmachan Drive should simply be applied to the Subject Property. Ms Bennett provided clarification of her submission to the Tribunal by reference to the comparative GEAs of the Subject Property and No 21 Glenmachan Drive and their Capital Values in the Valuation List.
- 7.9 The Tribunal considers the Open Market sale of the Subject Property on 9th August 2005 at £330,000.00 as being incontrovertible evidence of the market value of the Subject Property on that date. The Tribunal agrees with the Appellant's Submission that due to house price inflation during 2005, the Capital Value at 1st January 2005 cannot therefore reasonably be regarded as also having been £330,000.00. Having considered carefully the particulars, the Capital Values and, where available, the sales details of the comparable properties in the locality and the adjacent property at 21 Glenmachan Drive and having taken into account the submissions of the parties, the Tribunal considers that the appropriate Capital Value Assessment of the Subject Property at the AVD of 1st January 2005 is £320,000.00.
- 7.10 Accordingly the unanimous Decision of the Tribunal is that the appeal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 22nd July 2008 is allowed and that the Capital Value of the Property at 19 Glenmachan Drive, Ballymachan, Belfast BT4 2RE be assessed at £320,000.00 and the Tribunal directs that the Valuation List be altered accordingly.

**Mr Alan Reid, Chairman
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: