

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

CASE REFERENCE NUMBER: 14/08

**Mr W G Mc CONAGHY- APPELLANT
AND
COMMISSIONER OF VALUATION - RESPONDENT**

**Northern Ireland Valuation Tribunal
Chairman: EAMON O' CONNOR
Members: Mr William Moore MRICS and Mr Edwin McMaster.
Belfast, 17th October 2008**

DECISION

The unanimous decision of the tribunal is that is that the Commissioner of Valuation for Northern Ireland's Decision on Appeal 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"). There was no appearance before the tribunal by or on behalf of the appellant and the respondent, both parties having indicated that each was content to rely upon representations in writing. In accordance with Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007, an appeal may be disposed of on the basis of written representations if all the parties have given their consent in writing to that course.

The appellant, by claim form dated 14th May 2008 appealed against the decision of the Commissioner of Valuation for Northern Ireland ("the Commissioner") on appeal dated 16th April 2008 in respect of the valuation of a hereditament situated at 27 Harbour Road, Ballintoy, Ballycastle, BT54 6NA.

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 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) - . "

The Evidence

There was no oral evidence. On the 17th October 2008, 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 16 April 2008.
2. An Order for Extension of Time to Appeal dated 30th May 2008.
3. A document entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Land and Property Services ("LPS") and submitted to the tribunal for the purposes of the tribunal hearing.

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 27 Harbour Road Ballintoy Ballycastle BT54 6NA("the property"). The property is stated to be occupied by the appellant, but the tribunal had no other information regarding title, nor regarding the physical construction and characteristics of the property, save as is mentioned in the papers before the tribunal and referred to below.
2. The property is a detached farmhouse cottage which has been renovated and extended over the years with a Gross External Area of 175m². The property has oil heating, a porch, living room, sitting room, kitchen/dining, 3 bedrooms, bathroom and WC, shower and WC, PVC double glazed windows, mains electric and water services and has a septic tank. The property is located a short distance away from the coast and has no sea view.
3. The appellant is a full time farmer and the property has been designated as a farmhouse under the Rates (Northern Ireland) Order 1977 Schedule 12 Part 2. The assessment of the property reflects that designation with the property having had a 20% allowance applied.
4. The property was entered in the Domestic Capital Value Rating List as a farmhouse with a Capital Value of £120000. The capital value was subsequently increased by the District Valuer to £140,000, in a certificate dated 17 July 2007, to reflect alterations and an extension. On appeal to the Commissioner Of Valuation the assessment was reduced to

£132,000 to reflect the layout and positioning of the property. This assessment is at the antecedent valuation date, that being 1 January 2005 (“AVD”).

THE APPELLANT’S CASE

The appellant set out his various grounds of appeal in his Notice of Appeal. These were that this was an old single column house with one room leading off another; it was below ground level, damp with no damp course, no public sewer. He also referred to the stone and lime wall and that it was polluted with vermin.

THE RESPONDENT’S CASE

Mr Patrick Gallagher BSc MRCIS for the Respondent submitted a document entitled “Presentation of Evidence”, referred to above. This document was sent to the appellant by letter dated the 8th October 2008. The appellant submitted no reply to this. The Tribunal considered all of the evidence before it on the 17th October 2008. The Presentation of Evidence by Mr Gallagher refers to three comparable properties. An appendix contains a schedule with details of each comparable, showing a photograph of each property and gives details of property size, details of the property and the Capital Value Assessment. All the comparable properties are described as, similar type properties, having had some degree of renovation and modernization, of a similar age and located in the same general area. All the comparables are described as farmhouses with each having the same 20% allowance as the subject.

Comparable 1 was described as the closest comparison, being 0.5 miles from Ballintoy, 19m² smaller, but with a garage, and a capital value of £140,000. Comparable 2 was described as significantly smaller comprising 135m² and an assessed value of £116,000. Comparable 3 was described as 14m² smaller, with a capital value of £136,000. This is located approximately two miles from the subject property, very close to the main road. A location map of the subject and comparables was appended to the Presentation.

The Presentation of Evidence outlined the appellant’s grounds of appeal at page 4 and commented on the specific grounds of appeal raised by the appellant at page 5. In this document, Mr Gallagher described the subject as being of similar age and construction to the comparables which all have septic tank facilities. Mr Gallagher considered that the

internal layout and location of the subject below ground level may have an impact on the capital value and has taken this into account in the assessment.

The issue of vermin was considered and Mr Gallagher commented that all of the comparables are farmhouses within the same locality with no evidence that one property is significantly more affected by vermin than another.

Unfortunately there was no mention of “damp” which was specifically referred to in the appellant’s grounds of appeal. In the Presentation of Evidence, in the section entitled “Respondent’s Opinion/Comment” and under the sub heading of “Valuation and Comment”, when dealing with the specific grounds of appeal raised by the appellant, there is no reference to damp or whether the property has a damp proof course.

As this appeal was to be decided on the basis of written representations under Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007, the Tribunal required the Respondent to comment specifically on the Section of the Appellant’s Grounds of Appeal wherein he states “ damp with no damp coarse”. The Respondent was asked specifically was “damp with no damp coarse” taken onto account in the assessment of this property and the comparable properties and does it have an impact on the capital value of the subject property.

This requirement was sent to the Respondent by letter dated the 20th October 2008, under Rule 11 (7) (a). A copy of this letter was sent to the Appellant on the same date.

Mr Patrick Gallagher for the Respondent replied on the 10th November 2008. He commented that, “Although the original dwelling was of rubble masonry construction, the various additions to the property, including extensions....are of modern construction and have a damp proof course.” He commented that he inspected the premises both externally and internally and did not notice any damp problem during the inspection.

This response has been considered by the Tribunal and was copied to the Appellant. The Appellant has made no further comment and has submitted no further evidence.

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 the antecedent valuation date, that being 1st January 2005 at a figure of

£132,000 i.e. £165,000 less 20%. On behalf of the Commissioner it has been contended that that figure is fair and reasonable in comparison to similar properties.

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.

The tribunal has now considered all of the evidence and all of the appellant's grounds of appeal have been responded to. In this case, as in all cases, the statutory provisions state 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 property. The tribunal is satisfied that the comparable properties quoted by the respondent are direct and fair and do not show the capital valuation of the subject property to be manifestly unfair.

The appellant's grounds in relation to damp, no damp proof course and pollution with vermin are not supported by any persuasive evidence. Mr Gallagher stated in his letter of the 10th November 2008 that he inspected the premises both externally and internally and did not notice any damp problem. He refers to the "various additions to the property, including extensions....are of modern construction and have a damp proof course". The appellant did not challenge this letter which has been sent to him.

The subject property is said by the Respondent to be of a similar age and construction to the comparable properties which all have septic tank facilities. The appellant has not sought to challenge the assessments of the comparable properties referred to by the Respondent. The Respondent has stated that the internal layout and location below ground level has been taken into account in the assessment and this has not been challenged by the appellant.

Taking the state of the evidence presented to the tribunal in this appeal, the tribunal is satisfied that the appellant has not produced sufficient evidence, information and argument to displace the presumption that the valuation on the register is correct.

DECISION

The tribunal's unanimous decision is that the Commissioner's Decision on Appeal is upheld and the appeal is dismissed.

Eamon O' Connor, Chairman
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: