

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

CASE REFERENCE NUMBER: 32/08

JAMES STEWART - 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 Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 22nd September 2008 is upheld and the Appellant's Appeal is dismissed.

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 20th October 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 September 2008 in respect of the Valuation of a hereditament situated at 1 Farnley Crescent, Glengormley, Newtownabbey, County Antrim BT36 7TX.
- 1.3 The Appellant, Mr Stewart, appeared and represented himself. Mr Gareth Neill 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 20th October 2008 and copies of various documents including:-

- The Commissioner's Decision on Appeal dated 22nd September 2008
- A document entitled "Presentation of Evidence" submitted on behalf of the Commissioner by Mr. Gareth Neill of Land and Property Services
- A booklet of documents entitled "Response to Land and Property Services Evidence" submitted by the Appellant
- Brief details of the Capital Values of two properties at 5 Harmin Park and 8a Harmin Park, Newtownabbey confirming their Capital Values which were provided by the Respondent at the request of 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 two storey dwelling house situated at 1 Farmley Crescent, Glengormley, Newtownabbey, County Antrim BT36 7TX ("the Subject Property"). The Subject Property was stated to be owned by the Appellant who confirmed that he was the rate payer.

4.2 The Subject Property is of brick and tile pitched roof construction with PVC double glazing. It has all mains electricity, water and sewerage services.

- The living accommodation comprises two reception rooms, a kitchen, three bedrooms, one of which has an ensuite bathroom, and another bathroom. The gross external area ("GEA") is 114 m² and in addition there is a single garage. The property has central heating. The Appellant had carried out some alterations to the Subject Property. This involved the replacement of an existing garage with a new garage and a bedroom above the garage.
- 4.3 The Subject Property occupies a corner site at Farmley Crescent. The other dwellings in Farmley Crescent are similar to the Subject Property in terms of their age and construction but they are all semi-detached. The Subject Property is the only detached dwelling in Farmley Crescent.
 - 4.4 The Capital Value Assessment of the Subject Property is £125,000.00 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 of the Valuation List of properties considered by the Respondent to be 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 eight comparables, further particulars of the comparables were provided including photographs of six of them. Six of the comparables also had related sales particulars.
 - 4.5 Farmley Crescent is not far from the centre of Glengormley. It has a junction with Hightown Road close to the Hightown bridge over the M2 motorway. Traffic, including heavy lorries and other commercial traffic use Farmley Crescent as a short cut to avoid traffic lights in Glengormley.
 - 4.6 Farmley Crescent itself is close to the M2 motorway. The noise and smell from motorway traffic is often apparent in Farmley Crescent.

5. The Appellant's Submission

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

- 5.1 The Subject Property had initially been given a Capital Value Assessment of £110,000.00 but this had been reviewed upwards to £125,000.00. It was the Appellant's Submission that this increase was a result of him notifying Land and Property Services of the alterations which he had carried out to the Subject Property.
- 5.2 The Appellant submitted that the comparables put forward on behalf of the Respondent were inappropriate. He pointed out that all three of the comparables which were located in Farmley Crescent were semi-detached houses whereas the Subject Property was a detached house. He pointed out that the properties at 25 and 30 Farmley Crescent both had GEA's of 94m² and that No. 11 Farmley Crescent had a GEA of 102m². Nos. 25 and 11 both have single garages like the Subject Property. No. 25 Farmley Crescent had a Capital Value of £95,000.00, No

30 Farmley Crescent of £90,000.00, and No. 11 Farmley Crescent had a Capital Value of £100,000.00 in comparison to the Capital Value of the Subject Property at £125,000.00.

- 5.3 The Appellant sought to challenge the GEA of the comparable properties in Farmley Crescent. He suggested that No's 25 and 30 Farmley Crescent were in fact possibly larger than the Subject Property. His submission was based upon an exercise which he had conducted to count the number of bricks incorporated in the width of the front elevation of each of the properties. He had found the semi-detached dwellings had 29 bricks across the width of the front elevation whereas he said that the Subject Property had 23 bricks across the width of its front elevation. On the basis that each brick is 9 inches long he concluded that the semi-detached dwellings were approximately more than 4½ feet wider than the Subject Property.
- 5.4 The Appellant also contended that the replacement garage which he had constructed at the Subject Property had wider cavity walls than the previous one and that this had resulted in an increase in size of the garage. He stated that the original garage had been 16ft 9 ins x 9ft 6ins whereas the new garage was now 18ft x 13ft 10ins.
- 5.5 The Appellant submitted that properties at Harmin Drive and Harmin Park, Glengormley were more appropriate comparables than those put forward by the Commissioner. He drew the attention of the Tribunal to properties at 8a Harmin Drive and 5 Harmin Park, providing the Tribunal with photographs of these properties. Both properties were detached properties. Again, the Appellant had conducted his exercise of counting the number of bricks included in the width of the front elevation of these properties and found that there were 26 bricks across the front elevation of No 8a Harmin Drive and 23 across the width of the front elevation of No 5 Harmin Park. He informed the Tribunal that he had "paced out" the gables of these properties at approximately 30ft.
- 5.6 The Tribunal was provided with brief details of the Capital Value listing of 5 Harmin Park, Newtownabbey. This was described in the brief details provided as being a semi-detached property with a GEA of 71m² and a Capital Value of £70,000.00. The Tribunal noted the description in the Capital Value list of this property as a semi-detached property whereas the Appellant's submission was that it was a detached property. No further details of the Capital Value listing of the property at 8a Harmin Drive were available to the Tribunal at the hearing.
- 5.7 The Appellant referred to the comparable put forward on behalf of the Commissioner at 7 Collinbridge Road, Newtownabbey which was a detached house constructed around the same time as the Subject Property with an identical GEA of 114m². It has a Capital Value of £150,000.00 in the Valuation List. The Appellant's submission was that Collinbridge was located in what the Appellant referred to as a "different

- pricing zone". It was much further from the Subject Property than the other comparables put forward on behalf of the Respondent.
- 5.8 The Appellant referred to the comparables put forward on behalf of the Respondent at 22 and 35 Hightown Drive, Glengormley. He contended that these were not appropriate comparables. They were located on the opposite side of the M2 motorway from the Subject Property. No 35 Hightown Drive is a detached bungalow with a GEA of 93m² although the Appellant contended that in his view the floor space was greater than that of the Subject Property. It had a Capital Value of £125,000.00. No 22 Hightown Drive was a semi-detached bungalow again with a GEA of 93m². Its Capital Value was £110,000.00. The Appellant argued that it was not appropriate to use bungalows, whether detached or semi-detached, as comparables as the Subject Property was a two storey house.
- 5.9 The Appellant argued that the comparable at 23 Derry Road, Newtownabbey put forward on behalf of the Respondent was also inappropriate as it, too, was a detached bungalow and was in a different part of Glengormley from Farmley Drive. He felt that in considering the Capital Value of the Subject Property, regard should more properly be had to other properties in the Farmley area of Glengormley.
- 5.10. The Appellant drew the Tribunal's attention to the proximity of the M2 motorway and argued that the noise, smell and dirt from motorway traffic had an adverse impact upon the Subject Property and indeed upon other properties in proximity to the motorway. He contended that this created an adverse impact upon the Subject Property which should be taken into account in assessing its Capital Value.
- 5.11 The Appellant also argued that Farmley Crescent was used as a short cut for heavy commercial traffic from the Hightown Road. He said that this would be exacerbated if further anticipated commercial and residential development in the area proceeded. He provided photographs demonstrating the use of Farmley Crescent by articulated commercial lorries. Again he felt that these factors should be taken into account in assessing the Capital Value of the Subject Property.
- 5.12 In response to questions from the Tribunal, the Appellant accepted the accuracy of the sales details for the properties at 25 and 30 Farmley Crescent, 22 and 35 Hightown Drive and 7 Collinbridge Road as shown in the Valuation List.
- 5.13 The Applicant also referred the Tribunal to a recent sales brochure relating to No 27 Farmley Road and provided a copy to the Tribunal. This property was a semi-detached two storey dwelling which was marketed in 2008 with an asking price of £125,000.00. The Appellant volunteered that on reflection this information was not particularly helpful to establish a Capital Value Assessment as at 1st January 2005.

6. The Respondent's Submissions

In summary, Mr. Neill made the following submissions on behalf of the Commissioner -

- 6.1 In carrying out the Capital Value Assessment of the Subject Property proper regard had been had to paragraphs 7 and 9-15 inclusive of the 1977 Order to determine the value 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". Regard had also been had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances as required by Schedule 12.
- 6.2 Mr. Neill addressed the Appellant's submission in relation to the GEA of the Subject Property following the garage replacement carried out by the Appellant. He argued that all properties were measured on the same basis - that basis being the Code of Measuring Practice of the Royal Institution of Chartered Surveyors. At the conclusion of his submissions, Mr. Neill responded further to a query from the Appellant to confirm that the garage at the Subject Property was not included within the GEA of 114m² as appearing in the Valuation List. The bedroom above the garage was however included in the GEA. The former GEA for the property before the work had been carried was 87m². This did not include the former garage. The new structure which replaced the old garage is a garage on the ground floor with a bedroom above. The new garage measures 27m². The bedroom above also measures 27m². The new garage has not been included in the GEA. The new bedroom has been included. Adding its GEA of 27m² to the original GEA of 87m² gives the Subject Property a current GEA of 114m².
- 6.3 Mr. Neill conceded that this was not a simple case in which to provide comparables because the Subject Property was the only detached property in Farmley Crescent. Indeed there were not very many detached properties in the locality generally. He felt however that the comparables, which in many cases had Capital Values derived from relevant sales a relatively short time before or after the AVD of 1st January 2005, gave a broad range of comparable values for other properties in Farmley Crescent (albeit semi-detached) and other detached properties in the locality generally. He argued that taking into account the GEAs and other particulars of the comparable properties put forward, the Capital Value of £125,000.00 for the Subject Property accorded with the tone of the Valuation List and could be regarded as a reasonable valuation as at 1st January 2005.
- 6.4 Mr. Neill said that when he had visited the Subject Property he had not noticed any significant noise from the motorway traffic. He pointed out that any noise would in any event affect all of the properties in Farmley Crescent and the other streets and roads in the area which were near to the M2 motorway.

- 6.5 Mr. Neill conceded that Farmley Crescent was used by some commercial traffic and other traffic as a short cut. He said that he had not noticed any excessive traffic on his inspection but that in any event this factor would influence the values of all properties in Farmley Crescent and not just the Subject Property. As to the effect of ongoing development in the Glengormley area, he submitted that in accordance with Article 39a (1) of the 1977 Order the valuations in the Valuation List reflected the state and circumstances as at 1st April 2007 when that list came into effect. Any ongoing development after 1st April 2007 would be taken into account on a future general revaluation exercise in accordance with the legislation.

7. The Tribunal's Decision

- 7.1 The Tribunal is grateful to the parties for their submissions and commends them for their courteous and co-operative approach to the preparation and presentation of those submissions to 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 £125,000.00. 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 articles 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 is satisfied on the evidence that the initial assessment as to Capital Value has been carried out in accordance with the prescribed manner as set out Schedule 12 of the 1977 Order. The evidence submitted as to comparables and the submissions on behalf of the Commissioner lead the Tribunal to conclude that the correct statutory approach has been followed.
- 7.5 The Tribunal then turns to consider whether there is sufficient evidence in the arguments made by the Appellant to displace the statutory presumption.
- 7.6 Dealing firstly with the Appellant’s contentions that the Capital Value Assessment does not properly take account of the adverse impact of the adjacent M2 motorway and the fact that Farmley Crescent is used as a short cut by a significant amount of traffic the Tribunal accepts that the

- Subject Property does suffer to some extent from these factors. They clearly are an understandable source of irritation and concern to the Appellant. However, the Tribunal also accepts Mr. Neill's submission that these are factors which affect all of the properties in Farmley Crescent and, in the case of the motorway factor, many other properties in Glengormley. The Tribunal considers that these factors are fully reflected in the Capital Values not only of the Subject Property but of the relevant comparables.
- 7.7 Schedule 12 of the 1977 Order requires that in assessing the amount which the Subject Property might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant AVD (in this case 1st January 2005) regard must be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances. Mr. Neill has put forward a number of comparables and hereditaments on behalf of the Respondent. The Appellant sought to challenge a number of these broadly on the basis that the GEAs for the Subject Property and the comparable properties as shown in the Valuation List were incorrect. Had he been able to demonstrate to the satisfaction of the Tribunal that the GEAs as shown in the Valuation List were inaccurate, this would have cast some doubt upon the Capital Value Assessments of the respective properties. The Appellant's chosen method of assessing the size of the properties in question was to count the number of bricks in the width of the front elevations of some of the properties and to "pace out" some of the gables. The evidence on behalf of the Respondent was that in calculating GEA the Commissioner's representatives employed the RICS Code of Measuring Practice. The Tribunal preferred the evidence of Mr Neill in this regard and is accordingly not satisfied that the Appellant has demonstrated any of the GEAs of the Subject Property or the comparable properties to be incorrect.
- 7.8 Unfortunately in this case there simply are no comparable detached properties in Farmley Crescent to use as comparables. The Respondent put forward as comparables three semidetached dwellings in Farmley Crescent two of which had GEAs of 94m² and the third had a GEA of 102m². Their Capital Values ranged from £90,000.00-£100,000.00. The Subject Property has a GEA of 114m² and the Tribunal felt that it's Capital Value of £125,000.00 appeared reasonable in comparison to the semi-detached houses in Farmley Crescent put forward as comparables.
- 7.9 The Commissioner put forward a number of detached properties as comparables. The Tribunal agrees with the Respondent that the suggested comparable at 7 Collinbridge, Newtownabbey is not appropriate as it is somewhat remote from the other comparables put forward and is located in a locality which may not be comparable to Farmley Crescent. Also for similar reasons the Tribunal is not persuaded that the property at 23 Derry Road is a suitable comparable.

- 7.10 The Tribunal however does take note of the detached bungalows at 19 Farmley Park and 35 Hightown Drive, Glengormley. Both of these properties have GEAs of 93m² - significantly smaller than the Subject Property. 19 Farmley Park is on the same side of the M2 motorway as the Subject Property and has a Capital Value of £115,000.00. 35 Hightown Drive is on the opposite side of the M2 motorway and has a Capital Value of £125,000.00. Taking account both of the detached nature of these properties and their smaller GEAs, the Tribunal is again of the view that they lend support to the Respondent's submission that the Capital Value of the Subject Property at £125,000.00 should not be altered.
- 7.11 With regard to the properties at 8a Harmin Drive and 5 Harmin Park proposed by the Appellant as comparables, the Tribunal was not satisfied on the balance of probabilities that these properties were suitable comparables. They are located somewhat further from the M2 motorway than either Farmley Crescent or Hightown Drive and the information provided to the Tribunal with regard to their particulars and their GEAs was insufficiently established as to be reliable.
- 7.12 Having carefully considered the particulars, Capital Values and, where available, sales details of the comparable properties in the locality the Tribunal considers that the most appropriate comparables are those at numbers 11, 25 and 30 Farmley Crescent, Glengormley and at 19 Farmley Park and 35 Hightown Drive, Glengormley. Having considered the submissions of the parties in relation to these the Tribunal is of the view that the appropriate Capital Value Assessment of the Subject Property at the AVD of 1st January 2005 is £125,000.00 as it presently appears in the Valuation List.
- 7.13 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 September 2008 is dismissed.

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

Date decision recorded in register and issued to parties: