

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

**CASE REFERENCE NUMBER: 28/08**

**GERARD SWEENEY - APPELLANT  
AND  
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

**(CONOR MARRON - INTERESTED PARTY)**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr Alan Reid**

**Members: Mr Bill Deddis and Mr Ronald Orr**

**Belfast, 8<sup>th</sup> December 2008**

## **DECISION**

The unanimous decision of the Tribunal is that is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 2<sup>nd</sup> 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 24<sup>th</sup> September 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 2<sup>nd</sup> September 2008 in respect of the Valuation of a hereditament situated at 23 Torgrange, Ballymenagh, Holywood, County Down BT18 ONG
- 1.3 In accordance with Rule 9 (2)(h) of the Valuation Tribunal Rules (Northern Ireland) 2007 ("the Rules") the Tribunal considered that the Interested Party had an interest in the Appeal in consequence of which he was joined as a party to the proceedings.

- 1.4 All parties to the Appeal had indicated that they were each content that the Appeal be disposed of on the basis of written representations in accordance with Rule 11 of the Rules and accordingly there was no appearance before the Tribunal by or on behalf of any of the parties.

## 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 1<sup>st</sup> 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 subparagraph.

(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**

The Tribunal heard no oral evidence but had before it the Appellant’s Notice of Appeal dated 24<sup>th</sup> September 2008 and copies of various documents including the following:-

- 3.1. The Commissioner's Decision on Appeal dated 2<sup>nd</sup> September 2008.
- 3.2. A document entitled "Presentation of Evidence" submitted on behalf of the Commissioner by Claire White of Land and Property Services.
- 3.3. A letter from the Interested Party dated 10<sup>th</sup> November 2008 enclosing an Estate Agent’s brochure in relation to the Interested Party’s hereditament at 25 Torgrange, Ballymenagh, Holywood, County Down BT18 ONG
- 3.4. A response dated 21<sup>st</sup> November 2008 prepared by Claire White of Land and Property Services on behalf of the Commissioner.
- 3.5. Correspondence between the Tribunal and the Parties.

All of these documents had been provided to all of the Parties who had each been given an opportunity to consider and respond to them before being considered by the Tribunal.

#### 4. **The Facts**

Based upon the information before it, the Tribunal determined, upon the balance of probabilities, the following facts:-

- 4.1 The hereditament is a dwellinghouse situated at No 23 Torgrange, Holywood, County Down BT18 ONG (“the Subject Property”). The Subject Property was stated to be owned by the Appellant who the Tribunal understood to be the rate payer. The Tribunal had no other information regarding title to the Subject Property nor regarding its physical construction and characteristics save as mentioned in the papers before the Tribunal and referred to herein.
- 4.2 The Subject Property is a detached chalet bungalow constructed circa 1970. It has a gross external area (“GEA”) of 119 m<sup>2</sup>. It has a brick and block construction with a tiled pitched roof and is situated in a development of similar type properties near Holywood. It has mains electricity, water and sewerage services and full oil-fired central heating. In addition to the GEA already referred to, the Subject Property has a single garage. On the ground floor the Subject Property comprises a kitchen, cloak room and two reception rooms with a third reception room presently used as such but otherwise available for use as a bedroom. On the first floor there is a bathroom and three further bedrooms, one of which is accessed through another small dressing room. The Appellant had purchased the Subject Property from his sister in a private sale sometime in 2005 but the Tribunal was otherwise provided with no evidence in relation to the purchase price paid nor the circumstances of the sale.
- 4.3 The Interested Party’s property is No 25 Torgrange, Holywood and is located adjacent to the Subject Property. It is of similar age and construction to the Subject Property and also has all main services and full central heating. It has a slightly larger GEA of 120 m<sup>2</sup> and in addition a double garage. The accommodation comprises two reception rooms, a kitchen, three bedrooms and a bathroom.
- 4.4 The Interested Party completed the purchase of his property at No 25 Torgrange on 3<sup>rd</sup> August 2005 paying the sum of £260,000.00, the property having initially been marketed at an asking price of £245,000.00.
- 4.5 The Capital Value Assessment of the Subject Property is £250,000.00 at Antecedent Valuation Date (“AVD”) that date being 1<sup>st</sup> 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 four comparables (including the Interested Party's property). Further particulars of the comparables were provided together with photographs of the Subject Property and all of the comparables. Two of the comparables were assessments only and two (including the property of the Interested Party) also had related sales particulars.

- 4.6 The Capital Value Assessments of the comparables were all unchallenged but that relating to the Interested Party's property was being reviewed by the District Valuer.
- 4.7 The Subject Property and all of the comparables are located over one mile from Belfast Lough. Some face toward the sea but the sea view is limited by other houses and vegetation and in the case of some of the properties (including the Subject Property) by the fact that they do not face toward the sea.

## **5. The Appellant's Submission**

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

- 5.1 In comparison to the Capital Values of No's 21 and 25 Torgrange the Capital Value Assessment of the Subject Property was too high.
- 5.2 The Capital Value Assessment of the Subject Property did not take account of the fact that the Subject Property did not face directly to the sea whereas the properties at No's 21 and 25 Torgrange did.
- 5.3. The Subject Property occupied a smaller site than either of the properties at No's 21 and 25 Torgrange.
- 5.4 Save as already referred to the Appellant did not seek to otherwise challenge the appropriateness of the comparables submitted in evidence on behalf of the Commissioner nor of the accuracy of the particulars of those comparables.

## **6. The Interested Party's Submissions**

The Interested Party in summary made the following submissions:-

- 6.1 Submissions with regard to the accommodation respectively comprised in the Subject Property and the Interested Party's property which are reflected in the Tribunal's findings of fact already referred to.
- 6.2 The Capital Value Assessment for No 19 Torgrange did not take into account an extension to the property
- 6.3 When the Interested Party had purchased his property at No 25 Torgrange in 2005 it had been unoccupied for some two years and was in a state of disrepair requiring remedial works.
- 6.4 The purchase of the Interested Party's property at No 25 Torgrange took place in August 2005. There had been house price inflation during the period between the Antecedent Valuation Date of 1<sup>st</sup> January 2005 and the date of completion of the purchase. It had been marketed for sale at around June 2005 with an asking price of £245,000.00 and therefore the current Capital Value Assessment at 1<sup>st</sup> January 2005 of £235,000.00 was reflective of its true property value.

## **7. The Respondent's Submissions**

In summary the following submissions were made on behalf of the Commissioner  
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- 7.1 The Capital Value Assessment of the Subject Property was 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" was duly observed.
- 7.2 The sales No's 25 Torgrange for £260,000.00 on 3<sup>rd</sup> August 2005 and of No 2 Torgrange for £249,950.00 on 27<sup>th</sup> April 2005 provide the best market evidence to support the Capital Value Assessments for the properties in the Torgrange Development.
- 7.3 Smaller properties in the Torgrange Development in the range 111 m<sup>2</sup> to 113 m<sup>2</sup> with single garages all have Capital Value Assessments of £240,000.00. Properties in the 119 m<sup>2</sup> to 120 m<sup>2</sup> range (with the exception of No 25 Torgrange, which is currently under review), are valued at £250,000.00-£260,000.00 with some of them being recorded as having double garages.
- 7.4 No 25 Torgrange is of similar size to the Subject Property.

- 7.5 No 2 Torgrange with a GEA of 113 m<sup>2</sup> is slightly smaller than the Subject Property and this is properly reflected by its lower Capital Value Assessment of £240,000.00 which is unchallenged.
- 7.6 No 21 Torgrange has a GEA of 112 m<sup>2</sup>, somewhat smaller than the Subject Property and has an unchallenged Capital Value Assessment of £240,000.00.
- 7.7 No 19 Torgrange has a GEA of 130 m<sup>2</sup>, somewhat larger than the Subject Property and has an unchallenged Capital Value Assessment of £260,000.00.
- 7.8 The values of comparable properties in Torgrange reflect the GEA of the respective properties rather than the sizes of the respective sites.
- 7.9 With regard to No 19 Torgrange the District Valuer is aware that this property has been extended but the stated accommodation, GEA and Assessed Capital Value of the property as included in the Valuation List do not take account of the extension.
- 7.10 With regard to the state of disrepair of the Interested Party's property at No 25 Torgrange at the time of his purchase in August 2005 the 1977 Order at Paragraph 12 of Schedule 12 requires that in assessing Capital Value it is to be assumed 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".
- 7.11 Given the limited nature of the sea views from the Subject Property and No's 21 and 25 Torgrange no distinction should be made between their respective valuations with regard to this feature.

## **8. The Tribunal's Decision**

- 8.1 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 £250,000. 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.
- 8.2 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.

- 8.3 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.
- 8.4 The Tribunal then turns to consider whether the evidence put before the Tribunal or the arguments made by the Appellant are sufficient to displace the statutory presumption. The Appellant's arguments have been summarised above. Essentially the Appellant's argument was that in comparison to the Capital Value Assessments of No's 21 and 25 Torgrange the Capital Value Assessment of the Subject Property was excessive. The Appellant did not, however, seek to challenge the Capital Value Assessments of either No's 21 or 25 Torgrange nor indeed of either of the other two comparables put forward on behalf of the Commissioner, No's 19 and 21 Torgrange.
- 8.5 On behalf of the Commissioner it is submitted that the current £235,000.00 Capital Value Assessment of the Interested Party's property at 25 Torgrange is presently under review, whilst the Interested Party contends that it is accurate.
- 8.6 The Tribunal in this case was impressed by the evidence submitted on behalf of the Commissioner to the effect that the Capital Value Assessments of the properties in the Torgrange Development and in particular those of the comparables put forward reflect the respective GEA of the properties with the exception of No 25 Torgrange.
- 8.7 Further, the open market sale prices of the properties at 2 Torgrange (GEA 113 m<sup>2</sup>) in April 2005 for £249,950.00 and 25 Torgrange (120 m<sup>2</sup>) in August 2005 for £260,000.00 are strong indicators that a Capital Value of £250,000.00 for the Subject Property (GEA 119 m<sup>2</sup>) as at 1 January 2005 is reasonable.
- 8.8 The Tribunal is not persuaded on the evidence available that there is any distinction to be drawn between the Subject Property and its neighbouring

properties with regard to the nature of the sea views available from each such as would have a bearing upon their respective Capital Value Assessments.

- 8.9 The Tribunal having examined the facts of the matter and the arguments and submissions finds that there is insufficient evidence to support the Appellant's Submissions. The Appellant has not displaced the statutory presumption that the valuation shown in the Valuation List in respect of the Subject Property shall be deemed to be correct until the contrary is shown. Accordingly the Tribunal's unanimous decision is that the Commissioner's Decision on Appeal dated 2<sup>nd</sup> September 2008 is upheld and the Appeal is dismissed.

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

**Date decision recorded in register and issued to parties:**