

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

CASE REFERENCE NUMBER: 17/08

GARY QUINN - APPELLANT
AND
COMMISSIONER OF VALUATION - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Stephen Herron

Members: Mr Philip Murphy FRICS and Mrs Anne Lees.

Belfast, 23 October 2008

DECISION

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

REASONS

The Hearing

1. There was no appearance before the tribunal by or on behalf of the appellant. The appellant had confirmed in writing that he was content for the appeal to be dealt with in his absence. The Tribunal heard oral evidence from the respondent and the written representations of the appellant were taken into consideration in reaching a decision.
2. The property the subject of appeal is 16 Manse Road, Ballygowan BT23 6HE. It is a detached bungalow on a spilt level site with a gross external area of 215 square metres. The property is of concrete block and tile construction

and was constructed in 2003. The accommodation comprises 2 reception rooms, kitchen, 3 bedrooms and a bathroom. There is full oil fired central heating and a double garage. The bungalow is situated in a rural area outside Ballygowan and is accessed via a short unsurfaced laneway. The occupier (the appellant) is employed full time in farming and the property is held with agricultural land.

3. On 10th June 2008 the Respondent reduced the capital value of the property on appeal to £248,000 as at 1st January 2005, the relevant capital valuation date. The Appellant further appealed against that decision under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order").
4. The following documents were before the Tribunal;
 - 1 Notice of appeal dated 23rd June 2008
 - 2 Commissioner's decision on appeal dated 10th June 2008
 - 3 Respondent's presentation of evidence
 - 4 E-mail from the appellant dated 20th October 2008
 - 5 Correspondence between the Tribunal and the parties.
5. The tribunal gave an oral decision dismissing the appeal. This notice confirms that decision and contains the tribunal's reasons for the decision in accordance with Rule 19 of The Valuation Tribunal Rules (NI) 2007.

The Law

6. The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order").
7. The tribunal considered the terms of the Schedule 12 of the 1977 Order as amended which states as follows;

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 (1 B) 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.”
8. Article 54(3) of the 1977 Order provides that, on appeal, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.

The Evidence

9. The tribunal first heard evidence from the respondent. The written representations of the appellant as set out in the Notice of Appeal were then put to the respondent for comment.
10. The appellant's ground of appeal was "If as stated the rates are calculated by the value of the property, due to the clause then the house can not be worth £248,000. No one will buy the house". It was put forward by the appellant that the capital valuation should be the stated build price of the property.
11. The tribunal did not have any evidence from the appellant as regards the nature of the clause which the appellant referred to in his grounds of appeal. However it was accepted by the respondent that a planning condition attached to the property restricting occupancy to "a person last engaged, or solely or mainly engaged, in agriculture, or a dependent of such a person residing with him or her or a widow or widower of such a person."
12. The respondent outlined that an allowance had already been applied in determining the valuation of the property to reflect the fact that the respondent was employed as a farmer on a full time basis. It was indicated by the respondent that the property was considered to be occupied in

connection with agricultural land and used as “a dwelling of a person whose primary occupation is the carrying on or directing of agricultural operations on that land” and therefore came under the provisions of Part II of Schedule 12 of the Rates (Northern Ireland) Order 1977. It was outlined by the respondent that the usual policy of capital value adjustment of farmhouse properties which met the statutory criteria was to apply a reduction of 20%.

13. It was stated by the respondent that the capital value of the property as at 1 January 2005 had initially been assessed as £340,000. After the 20% “farmhouse” reduction the capital value was entered as £278,000. At first appeal stage evidence of comparable properties in a rural setting was examined and it was considered that £310,000 was a fairer assessment of the capital value. As a result the Commissioner’s decision on appeal was that the valuation list should be amended, and a capital value of £248,000 was entered. It was explained by the respondent that the revised assessment of the property was £310,000, and the figure of £248,000 was reached after the 20% reduction was applied.

14. The respondent's presentation of evidence contained details of a number of comparables. Four of the properties were in rural locations in the Ballygowan area, and two were sited with addresses in Moneyreagh. It was outlined to the tribunal that it had been difficult to find suitable comparables by way of sales evidence. It was suggested by the respondent that the best properties for comparison purposes were 43 Tullygarvin Road, 118 Carrickmannon Road and 50 Carrickmannon Road. The respondent indicated that Moneyreagh was generally considered a "higher value" area, and it was conceded by the respondent that the properties in this area were of limited comparative value, and had only been included because they showed details of sale prices, albeit in August/September 2003. The schedule of comparisons contained within the presentation of evidence detailed that 43 Tullygarvin Road, Ballygowan was a modern detached bungalow with a double garage and a GEA of 205m². It is situated in a similar rural location to the appellant's property and is also accessed via a laneway. It has 3 reception rooms, a kitchen, 4 bedrooms and a bathroom. The capital value assessment of the property was £300,000. The property at 118 Carrickmannon Road is also a modern detached bungalow in a similar rural location to the property under appeal. It has a double garage and a large outbuilding. The GEA of the property is 207.5m². It consists of 2 reception rooms, a kitchen, 3 bedrooms and 2 bathrooms. The capital value assessment of this property was £310,000. The property at 50 Carrickmannon Road was also listed as a modern detached bungalow, of similar age and construction as the subject property. The property has 3 reception rooms, a kitchen, 3 bedrooms and a bathroom, and has a GEA of 208m². The occupier of this property is a full time farmer and an agricultural allowance had thus been applied in respect of the capital value assessment of this property. The capital value after the farmhouse reduction was £248,000. The respondent indicated that the capital value

assessment of these three properties had not been challenged.

15. The respondent submitted that the "Ballygowan" comparables put forward in the presentation of evidence were reasonable, as they were all of similar size, in a broadly similar location and not dissimilar in style and design to the subject property. Furthermore the comparable properties were built post 1990 and thus would be of a similar construction standard to the appellant's property which was constructed in 2003. The respondent's presentation of evidence also contained details of a property at 21 Ballykeigle Road, Ballygowan. This property was smaller than the subject property with a GEA of 186m². The property was assessed for capital valuation at £280,000, and was on sale at this price on 1 January 2005, although there was no confirmed sale. It was submitted by the respondent that the marketing of this property at £280,000 supported the revised assessment of the subject property. The appellant had raised the point in his e-mail that one of the properties in Moneyreagh had been assessed with a capital value of £340,000, but had actually been sold for £284,000, a difference of £56,000. The respondent submitted that the reason for this discrepancy was that the property had been sold in August 2003, some eighteen months prior to the capital valuation date.
16. In relation to the planning restriction which attaches to the subject property, the respondent indicated that Schedule 12 paragraph 11 of the Rates (Northern Ireland) Order 1977 (as amended) sets out an assumption that "The hereditament is sold free from any rentcharge or other incumbrance". The respondent indicated that it was considered that "incumbrance" includes planning conditions, and thus the restriction in place as regards the subject property had been disregarded in assessing the capital value. The respondent further submitted that as a 20% reduction had already been allowed due to the fact that the appellant was employed full time in agriculture, that to allow any further reduction for the agricultural planning condition would be "double counting".

The Tribunal's Findings

17. The tribunal began its consideration of the evidence by taking account of the 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*". This was interpreted to mean that it is 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.
18. The tribunal considered the assertion made by the appellant that the valuation of the subject property should be confined to the build cost. The

tribunal was satisfied that such a method of assessment was not within the statutory provisions which are to be applied in assessing capital value.

19. The tribunal was satisfied that the approach of the Commissioner on appeal in assessing the capital value of the subject property was in keeping with the manner prescribed by Schedule 12 paragraphs 7 (and following) of the Rates (Northern Ireland) Order 1997. On the basis of the evidence put before the tribunal it appeared that the assessment of the subject property was in tone with the comparable Ballygowan properties set out in the presentation of evidence from the respondent.
20. The appellant had not presented any evidence (i) in relation to the comparables used by the respondent, or (ii) as regards the decision of the respondent to treat the planning condition attaching to his property as an incumbrance, which would lead the tribunal to challenge the approach taken in assessing the capital value and displace the statutory presumption that any valuation shown in a valuation list with respect to a hereditament is deemed to be correct until the contrary is shown.

Decision

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

**Mr Stephen Herron, Chair
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: