

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

CASE REFERENCE NUMBER: 01/08

JOHN LIGGETT- APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Ms Siobhan Corr MRICS and Mr Peter Somerville.

Belfast, 28 November 2008

DECISION ON REVIEW

The unanimous decision of the Tribunal is that there are no proper grounds made out by the appellant to enable the Tribunal to review the decision of the Tribunal promulgated on 5 June 2008 and thus the Tribunal's decision shall not be reviewed and the appellant's application for review is dismissed.

REASONS

Introduction

1. This is a review of the Tribunal's decision ("the decision") in respect of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The decision was issued to the parties by the Secretary of the Northern Ireland Valuation Tribunal ("the Secretary") on 5 June 2008. The Secretary received a letter dated 11 June 2008 from the appellant requesting the Tribunal to review the decision. The respondent was duly notified of that application and objected to a review hearing.

2. In a memorandum dated 21 August 2008 sent to the Secretary on behalf of the respondent there were identified two possible grounds of review which it was felt were being put forward by the appellant. These were, firstly, the ground of “new evidence” and, secondly, the ground “interests of justice”. It was contended on behalf of the respondent in the said memorandum that both of these grounds were inapplicable to the case. That memorandum was copied to the appellant by the Secretary.
3. The appellant then sent further written submissions to the Tribunal, undated, but received by the Secretary on 11 September 2008. The content of these submissions will be briefly referred to below. An oral hearing duly proceeded on 28 November 2008. The appellant, Mr Liggett, attended, accompanied by Mr Smyth.

THE APPLICABLE LAW

4. The Valuation Tribunal Rules (Northern Ireland) 2007 (“the Rules”) provide at Rule 21 as follows in respect of review of any decision of the Tribunal:-

“21.—(1) If, on the application of a party or on its own initiative, the Valuation Tribunal is satisfied that—

(a) its decision was wrong because of an error on the part of the Valuation Tribunal or its staff; or

(b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented; or

(c) new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; or

(d) otherwise the interests of justice require,

the Valuation Tribunal may review the relevant decision.

THE HEARING AND THE ARGUMENTS

5. The Tribunal at the outset of the hearing clarified to the appellant the foregoing statutory grounds available to the Tribunal to conduct a review of any decision. The Tribunal, firstly, explained to the appellant that he would have to initially

establish proper grounds upon which the Tribunal might proceed to review the decision. If he failed to do that the review could not proceed. Then, the Tribunal discussed with the appellant which of the four possible statutory grounds available might properly be applicable to his review request. After some discussion (and indeed following assistance provided to the appellant on the Tribunal's part in identifying appropriate potential grounds), the appellant identified the grounds respectively contained within Rule 21 (b) (c) & (d) of the Rules. The Tribunal then heard argument on the appellant's part as to why the Tribunal should properly review the decision on foot of each of these three grounds.

THE APPELLANT'S ARGUMENTS

6. Taking these in turn, the appellant's arguments in respect of each of the said grounds were as follows:

Rule 21 (b) (a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented).

The appellant contended that he had not had sight of the respondent's documentation entitled "Presentation of Evidence" until shortly before the commencement of the original hearing. His witness Mr Smyth (brought by him today to give evidence to the Tribunal) would have probably attended the original hearing of the matter if the appellant had received the respondent's document "Presentation of Evidence" a sufficient time in advance of the hearing to enable him to decide if a witness had to be called. Thus the appellant identified the source of the difficulty in this regard as stemming entirely from late receipt of the "Presentation of Evidence".

Rule 21 (c) (new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then)

Again, connected with the late receipt of the "Presentation of Evidence", the appellant confirmed that the new evidence (which he hoped now was to be permitted to be provided to the Tribunal) consisted of an elaboration of some evidence which had already been placed before the Tribunal, but by way of further clarification. He

contended that this additional evidence could not reasonably have been known or foreseen before the original hearing on account of the fact that the appellant was unable to identify what evidence he might require to produce in order to counter the evidence of the respondent.

Rule 21 (d) (*otherwise the interests of justice require*) (a review)

Again, (prompted to an extent by the Tribunal's explanation to the appellant of the nature and extent of this potential head of review) connected with the late receipt of the "Presentation of Evidence", the appellant contended that the late receipt of the respondent's evidence was unfair and thus ought to have resulted in the Tribunal adjourning the matter. Whilst it was accepted by the appellant that the Chairman had expressed concern at the hearing and had indeed requested the appellant to take some time to read this evidence and had then asked the appellant if he wished to continue, it was not clear to the appellant that if he refused to proceed he would not be disadvantaged. The appellant contended that he was not legally represented and the significance of the evidence was not clear to him.

In addition to the foregoing, the appellant also contended, in general terms, that the Tribunal had disregarded the valuation evidence which was placed before the Tribunal by him at the original hearing in order to assist his case.

THE TRIBUNAL'S DETERMINATION OF THE ISSUE

7. The Tribunal notes the statutory power available to it on foot of Rule 21 of the Rules. The appellant has endeavoured to make out a case on three statutory grounds that the Tribunal is entitled to conduct a review of its decision on these three grounds. The respondent has opposed that. In determining the issue, the Tribunal has identified as being a key consideration in the case the matter of the late receipt by the appellant of the Presentation of Evidence from the respondent.

8. Leaving that rather important consideration aside briefly, the Tribunal further notes that the appellant has also endeavoured to argue that the Tribunal has had no regard to the evidence which the appellant has put forward concerning valuation and concerning the special circumstances attaching to the subject property which evidence, the appellant has contended, ought to have resulted in his appeal being

successful. In respect of this latter issue, the Tribunal cannot see how the appellant has made out any sustainable or persuasive case on any of the three said grounds of possible review. The Tribunal's decision has recorded in summary form the essential findings of fact derived from evidential material which was placed before it. The Tribunal has considered the submissions and the arguments made in the course of the original hearing and the Tribunal has dealt with and has disposed of these in its decision. The only apparent statutory ground of review which might conceivably apply to this latter contention would be the "*interests of justice*" ground (that is to say Rule 21 (d)). In the absence of any identified authority within the Tribunal's own (and comparatively recent) jurisdiction being drawn to the Tribunal's attention, the Tribunal is of the view that the "*interests of justice*" ground ought properly to be construed fairly narrowly; that certainly appears to be the accepted practice in other statutory tribunal jurisdictions. Thus the "*interests of justice*" ground might be seen to apply to situations such as, for example, where there has been some type of what might be termed "a procedural mishap". That might be, for example, the Tribunal preventing a party from arguing an essential part of any case. (See for example the case of *Trimble v Supertravel Ltd [1982] ICR 440*, in an employment law context). Generally, however, it is broadly accepted that the "*interests of justice*" must properly encompass doing justice to the party who was successful at hearing and, further, the public interest in finality of litigation, as well as justice being properly and fairly afforded to the party seeking a review. The Tribunal will return to these matters in a discussion of the remaining issues below.

9. Returning then to the matter of the late presentation of respondent's evidence, as the Tribunal sees it, the key issue in the case relates to whether or not there occurred a procedural mishap which might have given rise to a properly sustainable argument on the "*interests of justice*" ground. At this hearing, the appellant has confirmed very clearly indeed, upon being closely questioned by the Tribunal regarding this matter, that he has accepted fully the Tribunal's recording of what had transpired in the early stages of the original hearing (as that is recorded in the decision) as being an accurate and complete record of the Tribunal's proceedings. Thus, it is worth while setting out here the Tribunal's record of this in the decision, which reads as follows:-

"At the commencement of the hearing, the appellant indicated that he had not had a sight until shortly before the commencement of the hearing of the respondent's documentation entitled "Presentation of Evidence". The Tribunal expressed some

concern at that fact and at the possibility that the appellant might have been placed under a significant disadvantage in that regard. Thus the Tribunal indicated that if the appellant either wished for more time to consider the documentation or, indeed, to apply to adjourn the matter, the Tribunal was quite prepared to accommodate the appellant in that regard. However, after some discussion, the appellant indicated that, in view of the nature of the specific case that he wished to present, he wished the hearing to proceed. He would reserve his position regarding the possibility of applying for an adjournment once he had heard the respondent's case argued. After some further discussion and having explained to the appellant various issues arising from the foregoing, on the basis of the appellant's decision in that regard, the hearing proceeded. After conclusion of the respondent's case, the appellant then indicated that he did not require any further adjournment or indeed any more time to consider his position; he was content for the Tribunal to proceed to make its decision on foot of the evidence and the arguments that had been advanced in the course of the hearing."

10. The appellant did not take issue with any part of the foregoing record of what had transpired at the original hearing. Nonetheless, he contended that the Tribunal ought to have effectively disregarded his own clearly expressed views and wishes and thus proceeded to adjourn the hearing, effectively of the Tribunal's own motion. The Tribunal is unsure as to whether or not it would have been entitled to proceed in this manner, that being effectively to set a course against the appellant's own clearly expressed wishes after the appellant had been afforded a reasonable opportunity by the Tribunal to consider his position and in the face of no objection from the respondent to the possibility of an adjournment under these circumstances.
11. The Tribunal does, further, take note a number of matters. Firstly, the appellant was afforded an entitlement at the stage of making his initial written application to the Tribunal (to initiate his appeal from the respondent's decision) to identify any witness that he wished to bring to the hearing, including any expert witnesses. That is a standard option to be indicated on the application form. The appellant chose not to do so either then or at any time in advance of the hearing. Secondly, the Tribunal notes that the appellant was invited at the hearing by the Tribunal to take whatever time he wished to read the respondent's documentary evidence. Thirdly, the appellant was invited on a number of occasions by the Tribunal, if he wished to do so, to apply to adjourn the proceedings. It was the appellant's own decision, as is

clear from the Tribunal's record of the proceedings that is set out above and not challenged by the appellant, to proceed with the matter. An adjournment would have been quite possible and would have been readily granted, as the Tribunal had indicated, under the particular circumstances. In the Tribunal's view, the appellant must accept the consequences of his decision. Thus, the Tribunal has very considerable difficulty in seeing how any type of what might be described as a "procedural mishap" occurred in the conduct of the proceedings sufficient properly to ground a review of the Tribunal's decision, in the "*interests of justice*".

12. As this issue is entirely interconnected with the first and the second stated grounds of potential review, the Tribunal determines that the appellant's submissions on all three grounds of potential review can be disposed of on the single determination of this point.

13. The Tribunal's unanimous determination is that nothing has transpired in the course of the hearing or since then which could properly give rise to an entitlement on the appellant's part to have the decision reviewed on the ground of the "*interests of justice*", being the third ground put forward (Rule 21 (d) of the Rules). Likewise, the Tribunal's unanimous determination is that there has not been made out by the appellant any case of sufficient weight upon which the Tribunal ought properly to review the decision on the first two grounds put forward (Rule 21 (b) & (c) of the Rules).

THE TRIBUNAL'S CONCLUSIONS AND GENERAL OBSERVATIONS

14. The case does raise concerns on the part of the Tribunal regarding late presentation of evidence. The Tribunal would wish to take this opportunity to highlight a real concern that such Presentation of Evidence ought on all occasions to be presented to any appellant, or to other party entitled to receive such evidence, a reasonable time in advance of any hearing, otherwise the matter might well be adjourned, with consequent cost, difficulty and inconvenience for all concerned. However, whilst the Tribunal does not regard it as being at all satisfactory that the respondent's Presentation of Evidence was not given to the appellant until the morning of the hearing, the appellant's resolution of any difficulty in regard to that issue lay in his

own hands. As is clear from the record of proceedings indicated above, the Tribunal tried as best it reasonably could to accommodate the appellant. The Tribunal's determination, looking at all of this, is that there has been nothing that could properly be said to amount to a procedural mishap in the matter nor are any other grounds established to have the decision reviewed by this Tribunal.

15. Accordingly the appellant's application for a review is dismissed by the Tribunal, without further Order.

**Mr James V Leonard, President
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: