

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

CASE REFERENCE NUMBER: 03/07

STEPHEN McMASTER - APPELLANT
AND
COMMISSIONER OF VALUATION - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Tim Hopkins FRICS and Mr Dermot Mullan.

Belfast, 26 March 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 9 November 2007 appealed against the decision of the Commissioner of Valuation for Northern Ireland ("the Commissioner") on appeal dated 29 October 2007 in respect of the valuation of a hereditament situated at 240a Tattymoyle Road, Tattymoyle Upper, Fintona, Omagh, County Tyrone BT78 3QB.

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 sub-paragraph 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. 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 29 October 2007.
2. A document entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Land and Property Services and submitted to the tribunal for the purposes of the tribunal hearing.
3. An undated letter received by the tribunal on 8 January 2008 from the appellant representing a further submission to the tribunal for the purposes of the tribunal hearing.

4. A document entitled "Supplementary Submission to the NI Valuation Tribunal" dated February 2008 prepared on behalf of the Commissioner by Land and Property Services and submitted to the tribunal for the purposes of the tribunal hearing.
5. Correspondence between the tribunal and the parties.

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 number 240a Tattymoyle Road, Tattymoyle Upper, Fintona, Omagh, County Tyrone BT78 3QB ("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. The appellant is understood to be the ratepayer.
2. The property is a detached chalet bungalow of concrete block and tile construction with double garage, constructed in 2007. The property is located on a rural roadside site in close proximity to the main Fintona to Tempo Road. The main dwellinghouse has a gross external area of 313m² and the garage has a gross external area of 52m². The property has oil-fired central heating, a reception room, a kitchen, four bedrooms, a bathroom, a shower room and a utility room, all on the ground floor, and two bedrooms and a shower room on the first floor. The property is served by mains electricity and water and a private septic tank system.
3. The appellant is stated to have purchased the property in July 2007 for the sum of £200,000. The property was first entered into the valuation list by certificate dated 9 July 2007. The capital value assessment is £215,000 at antecedent valuation date, that being 1 January 2005 ("AVD"). 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 are set out in a schedule to the Commissioner's Statement of

Case, with further particulars given thereafter in respect of these comparables, both sales and assessments, including photographs of the comparables. There are six comparables in total, two being assessments only and four being assessments together with sales particulars. A copy of the Commissioner's Statement of Case has been provided to the appellant and the appellant has responded thereto in his submission to the tribunal.

THE APPELLANT'S SUBMISSION

The appellant, in summary, has made the following submission:-

1. The evidence used by the Commissioner (the comparables) is for unchallenged properties. A challenged property gives a fairer capital value.
2. The use of number 221 Tattymoyle Road (as a comparator) is vague and out of context. The owners are stated to have banked on a rising property market continuing and reselling. The property was still on the market.
3. The appellant's property was purchased for £200,000 in July 2007. The appellant had made enquiries with local estate agents as to an applicable value as at January 2005 (in other words the AVD). Alternatively, deducting 40% (a figure contended by the appellant to be appropriate as a result of the appellant closely following the Northern Ireland property market for 4-5 years) that produced a valuation in the region of £140,000.

It is of note that there were no express and specific challenges made by the appellant to the appropriateness or to the accuracy of any of the comparables (other than to number 221 Tattymoyle Road), or indeed challenges or contentions made on any other basis than as is mentioned above, save that in the appellant's Notice of Appeal reference was made to:-

- (a) build costs in respect of the property were stated to be approximately £120,000 - £140,000; and
- (b) the property was stated to be five miles in all directions from services on an unclassified road with no street lighting, etc; and
- (c) the property was stated to have mains water and its own septic tank system; and

(d) the general contention was advanced that capital value for some houses in towns across Northern Ireland of the same size or larger (in relation to the property) were lower.

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 AVD at a figure of £215,000. 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.

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.

Dealing with these latter in reverse order, 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 Statement of Case and the tribunal notes the evidence contained in the report as to comparables and concludes without difficulty that the correct statutory approach has been followed in this case.

If there is nothing wrong on the face of it with the Commissioner's approach, has then the appellant adduced sufficient evidence or made sufficient argument to displace the statutory presumption? The arguments made by the appellant have been summarised above. Apart from the general arguments advanced by the appellant, whilst it was open to the appellant to challenge all or any of the comparables, there has been an express challenge only to

one comparable (both valuation and sales), that being in reference to number 221 Tattymoyle Road. Number 221 Tattymoyle Road is a property comprising 260m² gross external area with a capital value assessment of £170,000 and which is stated to have been sold at 30 April 2004 for £163,195 and again at 12 May 2006 for £235,000 and to be currently on the market for £350,000.

As is mentioned in the Commissioner's response to the appellant's submission, the appellant did not indicate which (of the two) sales of 221 Tattymoyle Road he considered to be above market value, nor did he provide corroborative evidence. The Commissioner considered that the sale prices in respect of number 221 Tattymoyle Road as at 30 April 2004 and 12 May 2006 (respectively for £163,195 and £235,000) were realised as open market sales and that it was therefore legitimate to consider these in arriving at a reasonable capital value in respect of the property. Further, the Commissioner has advanced the argument that the appellant's contention that the purchasers had paid above market value appeared contrary to his suggestion that the purchasers had bought 221 Tattymoyle Road specifically in order to resell and make a profit. The tribunal does not take the view that the appellant has sustained an effective challenge to the use of 221 Tattymoyle Road as a comparable nor indeed has the appellant challenged any of the other comparables. The tribunal does not therefore need to refer to these in this decision.

The remainder of the appellant's arguments are either unsupported by any evidence (for example the contentions (i) that the appellant had made enquiries with local estate agents as to an applicable value as at AVD, or (ii) that 40% was an appropriate figure to deduct as the appellant had closely followed the Northern Ireland property market for 4-5 years, or (iii) the contention that capital value for some houses in towns across Northern Ireland of the same size or larger were lower) or the appellant's arguments refer to matters outside the statutory considerations (for example build costs).

It is perhaps appropriate for the tribunal to state at this point that in order to displace the statutory presumption (that the valuation shown in a valuation list shall be deemed to be correct until the contrary is shown), the tribunal shall need to receive in any case a reasoned argument that is set out in appropriate detail and is supported by appropriate evidence. That can either be done (as has been chosen in this case) by documentation being placed before the tribunal, or alternatively this can be achieved by argument and proof at an oral hearing. However the tribunal, whilst certainly not bound by strict rules of

evidence, does require proof of any contentions to a reasonable minimum standard and degree.

In this case, it is fair to say that the appellant's arguments are largely unsupported by evidence; the tribunal cannot arrive at conclusions of fact without evidence. Having said that, the tribunal is conscious of the fact that appeals to the tribunal will largely be taken by persons without professional assistance or guidance and perhaps without financial and other resources to enable appropriate help and guidance to be sought. The tribunal is also conscious of its overriding objective to deal with cases fairly and justly, which includes dealing with cases in a proportionate manner regarding the complexity of the issues and the resources of the parties and seeking informality and flexibility in proceedings.

In this matter perhaps the appellant has not fully understood the task that faces any appellant in endeavouring to displace the statutory presumption. This task facing any appellant will be facilitated by the tribunal insofar as that is possible by the exercise of a flexible and accommodating approach on the tribunal's part. The tribunal however needs a minimum standard of evidence and proper argument upon which to proceed to discharge its functions. This case perhaps illustrates the potential difficulty faced by any appellant in relying only upon written representations. However, this is a choice given to any appellant and one that the appellant in this case has chosen to take.

Examining the facts of the matter and the arguments and submissions, the tribunal's unanimous decision is that the Commissioner's Decision on Appeal is upheld and the appeal is dismissed.

Mr James V Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: