

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

CASE REFERENCE NUMBER: NIVT 27/08

THOMAS SHAW – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman – Mr Michael Flanigan

Members – Mr David McKinney, Ms Pauline McCauley

Date of Hearing – 7th November 2008

Decision and Reasons

The decision of the tribunal by a majority is that the appeal be upheld and that the entry in the valuation list be amended to £100,000.

The Hearing

1. Neither the Appellant nor the Respondent appeared, and both parties relied on their written submissions only.

2. The subject property in this appeal was situate at 1 Downshire Park Central Belfast BT69JN (“the property”). The property is owned and occupied by the appellant who purchased the property from the Northern Ireland Housing Executive under the tenant purchase discount scheme in 1999. The property is a semi-detached house with a single garage accommodation and includes two reception rooms, a kitchen, and three bedrooms. The property is situated in a development of similar properties off the Cregagh Road Belfast. The

local council depot and recycling centre is situated at the rear of the property and the access road into the depot runs along the side of the appellant's house.

3. On the 2nd September 2008 the respondent issued the Commissioners Decision on Appeal and assessed the capital value of the property as £110,000 as on the 1st January 2005. The Commissioners decision commented that the effect of the recycling depot on the capital value was adequately reflected in the assessment.
4. The appellant appealed against that decision by a Notice of Appeal dated 20th September 2008.
5. The following documents were before the Tribunal.
 - 5.1 The Commissioners decision on appeal dated 2nd September 2008,
 - 5.2 Notice of Appeal dated 20th September 2008,
 - 5.3 Correspondence including e-mails between Northern Ireland Valuation Tribunal and the parties.
 - 5.4 Copy photographs supplied by the Appellant
 - 5.5 Appellants submissions on each photograph
 - 5.6 Copy Extract – Valuation of the premises dated 3rd June 1999 Brian H McCleary & Co
 - 5.7 Respondents Presentation of Evidence

The Law

6. The statutory provisions are set out in the Rates (Northern Ireland) Order 1977 ("the 1977 Order") as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order").
7. The Tribunal considered the terms of 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.

7.2 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.

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 and Submissions.

9. The appellant's evidence was comprised of his photographs and his written submissions and can be summarised as follows. The council depot and recycling centre was situated directly behind the property which is bounded on one side by the only access road to the depot. The property was adversely affected by smells and noise from the depot as well as fumes and dust. There were security cameras and lights at the back of the property with resulting loss of privacy and enjoyment of use. The access road at the side of the property was used by council lorries and private cars on a regular basis and bags of rubbish were left at the rear of the property when the depot was not open. The appellant further submitted that at the time of his purchase of the property from the NIHE that the house was £50,000 cheaper than any of the neighbouring houses.
10. The respondents for their part submitted that the capital valuation of

similar semi detached dwellings in this estate was £130,000 and that in this instance that the subject valuation of £110,00 resulted from an allowance of £20,000 having been made to reflect the detrimental effect of the depot on the property. The respondent sought to rely on a number of comparators and in particular the valuation of £120,000 placed upon no 5 Downshire Park central Belfast.

Tribunal Findings

11. This Appeal relates to the valuation of number 1 Downshire Park Central, Belfast which premises are immediately adjacent to a recycling depot.
12. The Appellant submitted that his premises were affected not merely by the noise and smell from the depot, which would have affected other adjacent properties, but also that the property directly overlooked the general activities conducted within the depot.
13. The property was also affected by security lights throughout the night and was further affected by the existence of the access road which ran alongside the gable wall of the property. The access road is used by council lorries and private cars using the recycling facilities. The Appellant in his written evidence explained that rubbish was also left at the rear of the property when the depot gates were closed.
14. In the case of Sidney and Myrtle Willey (NIVT 12/08) the Northern Ireland Valuation Tribunal looked at the valuation of another property in this location situate at 6 Downshire Park Central Belfast. In that case the capital valuation of £125,000.00 had been reduced by £5,000 to £120,000 due to the proximity of the depot. We note in that case that the subject premises were on the other side of Downshire Park Central, had no direct sight of the depot activities and were unaffected by the access road.

15. In the instant case the Commissioner has adopted a capital valuation of £130,000 for the property and that the said valuation was made subject to an allowance of £20,000 to reflect the proximity to the depot.
16. While the capital valuation of £130,000 in respect of a semi detached property in this area had not been challenged, the Tribunal noted that it did not appear to have been supported by actual sales figures and we would refer to 16 Downshire Park, Belfast a property larger than the subject property which was sold in June 2004 for £125,000 and which was on the respondents submissions “well removed from the Recycling Centre”.
17. The respondent relied in their submissions upon the capital valuation of £120,000 attached to 5 Downshire Park Central Belfast. The respondent did not disclose how that valuation figure had been arrived at and what allowance had been used in reaching that valuation. The majority of the Tribunal found that the valuation of No5 Downshire Park Central was of limited assistance as the premises had only a narrow point of contact with the boundary wall of the depot, with limited sight into the depot yard and were unaffected by the access road.
18. The evidence submitted by the Appellant with regard to the effect of the existence of the recycling depot and the access road upon the property and his enjoyment of same had not been challenged by the Respondent.
19. The Tribunal took the view that the existence of the Recycling Depot combined with the access road had a more direct impact upon number 1 Downshire Park Central than any of the comparables and accepted the appellants evidence that the property was significantly affected. The respondents in making an allowance of £20,000 also accepted that the value of the property was significantly affected by the depot. The Tribunal felt that the Appellants evidence together with the Respondents own valuations and comparables were sufficient to displace the presumption that the valuation on the register was correct.

20. The general rule of capital valuation is comprised in Article 7(1) of the 2006 Order and states that “the capital value of a hereditament shall be the amount 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”. The provisions of Art.7 (1) while subject to a number of assumptions are clearly directed towards establishing a market value for the premises on the relevant date, the 1st January 2005, in other words how much could the owner reasonably expect the property to sell for on that date. In the light of the findings above the Tribunal felt that an allowance of £20,000 was inadequate to reflect the significant impact of the proximity of the depot and the access road to the property and that an allowance of £30,000 would be a reasonable reflection of the impact of these factors upon the value of the property in order to establish the amount that the property might reasonably have been expected to realise had it been sold on the open market by a willing seller on the valuation date.

21. Applying an allowance of £30,000 to the original capital valuation of £130,000 resulted in a revised valuation of £100,000. The Tribunal directs that the valuation list be altered accordingly.

Mr Michael Flanigan

Chairman Northern Ireland Valuation Tribunal

Dated decision recorded and registered and issued to parties: