

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

CASE REFERENCE NUMBER: 22/08

RAYMOND McCROSSAN - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND -
RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Jeremy Mills

Members: Mr Brian Sparkes FRICS and Mr Keith Farrell.

Belfast, 24th October 2008

DECISION

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 22nd July 2008 shall be altered and the appellant's appeal is allowed.

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 appeal form dated 13th August 2008 appealed against the decision of the Commissioner of Valuation for Northern Ireland ("the Commissioner") on appeal dated 22nd July 2008 in respect of the valuation of a hereditament situated at 20 Leglands Road, Garvaghullion, Drumquin, County Tyrone, BT78 4TS.

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"). 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

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 22nd July 2008.
2. A document entitled "Presentation of Evidence" dated 3rd October 2008 prepared on behalf of the Commissioner by Land and Property Services and submitted to the tribunal and the appellant for the purposes of the tribunal hearing.
3. Correspondence between the tribunal and the parties.
4. A letter dated 15th October 2008 from the appellant commenting on item 2 above.
5. A letter dated 16th October 2008 from Land and Property Services on behalf of the respondent commenting on item 4 above.

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 dwelling-house situated at number 20 Leglands Road, Garvaghullion, Drumquin, County Tyrone, BT78 4TS ("the property"). The appellant is the ratepayer.
2. The property is a modern two storey detached farmhouse constructed in 2001. There are 4 bedrooms, one of which is on the ground floor. The property has a full oil fired central heating system. It has a gross external area of 240 m². The property is in a rural location and is accessed from the county road by a poor quality shared access laneway approximately 300 metres long.
3. The appellant, who is the owner and occupier of the property, is a full time farmer and the property has therefore been treated as a farmhouse under Schedule 12, Part 2 of the 1977 Order. In accordance

with its usual practice the respondent, in valuing the property, has made an allowance or “discount” of 20% to reflect its farmhouse status. After making this allowance the capital value of the property was reduced on appeal by the Commissioner’s Decision referred to above from £144,000 to £132,000 at Antecedent Valuation Date, that date of course being 1 January 2005 (“AVD”).

4. It is important to note that the 20% farmhouse allowance is not itself challenged by the appellant.

5. In the "Presentation of Evidence" the respondent provided summary details of three properties stated to be comparable to the property for valuation purposes either by virtue of their close proximity to the property or because they were of similar construction. All of these capital value assessments were stated to be “unchallenged”. None were said to be supported by appropriate sales details. This document also contained comments on the appellant’s 3 comparables.

THE APPELLANT'S SUBMISSIONS

The appellant in his written representations made the submission that the property is “grossly overvalued” in comparison with 3 other properties in the same rural locality which he provided details of. He argued for a reduced capital value of £100,000.

The appellant advanced no evidence in the nature of photographs, reports or letters from third parties. In essence, he submitted three comparable properties as follows to demonstrate that the property is overvalued. First, number 8 Leglands Road, valued at £88,000 after 20% agricultural allowance. Second, number 52 Leglands Road, valued at £104,000 after 20% allowance. And thirdly, number 39 Gillygooly Road, valued at £120,000 also after 20% agricultural allowance.

In summary, the appellant’s case was that his first two comparables had more valuable roadside frontages and yet had much lower capital values than the

property. Furthermore, he submitted that his third comparable was similar in size to the property, had a much better location being only approximately half a mile from the Omagh town boundary, was adjacent to the main road and yet also had a much lower capital value than the property.

The appellant offered no real challenge to the respondent's comparables.

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 AVD at a figure of £132,000. 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. It is to be noted that there is an important statutory presumption contained in Article 54(3) of the 1977 Order which 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 to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.

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.

As there is nothing wrong per se with the Commissioner's approach, the tribunal considered whether the appellant had satisfactorily argued a case to displace the statutory presumption. The main issue for the tribunal to decide was which of the differing comparables before the tribunal were most persuasive in arriving at the best estimate of the capital value of the property?

Turning to the comparables evidence advanced by the respondent, the tribunal found 5 Blackfarm Road, Kilmore to be the most persuasive. As shown by the helpful map attached to the respondent's Presentation of Evidence, this property is in the same general locality as the property. At 217 m² it is slightly smaller than the property but it is also a 4 bedroom detached house. Like the property, it is a farmhouse of modern construction (built in approximately 1999) and is accessed by what is described as a difficult 300 metre lane. The capital value of this comparable property is £120,000 (£150,000 before the 20% agricultural allowance).

The respondent's other two comparables are 87a and 73 Dunteige Road which are both in the same locality as the property and valued respectively at £175,000 and £200,000. Neither are eligible for the agricultural allowance it seems. Both are modern detached residences built in 2001. Number 87a Dunteige Road is 214 m² and number 73 is 251 m² but with the advantage of a double garage. Having given considerable thought to all the comparables, the tribunal feels that these two comparables, while helpful in some respects, are much more valuable than the property because they both have roadside access and do not suffer from the poor laneway access of the property.

Turning to the appellant's comparables, the tribunal found these to be much less helpful for various reasons. Whilst numbers 8 and 52 Leglands Road are both on the same country road as the property they are also much smaller properties, number 8 in particular being only 149 m². Additionally, both are of pre 1919 construction and both were extensively renovated in approximately 1990. Finally, both comparables have better roadside access compared with the shared laneway access of the property.

The tribunal found the appellant's comparable at 39 Gillygooly Road to be the least helpful of all the comparables because it is the furthest distance away from the property of all the comparables and has different value considerations due to its closer proximity to the busy town of Omagh. Also, it too is an old detached farmhouse built pre 1919 and subsequently modernised.

The comparables evidence and each parties written views on them were the only evidence before the tribunal. Weighing up the advantages and disadvantages of each comparable the tribunal felt that the respondent has made insufficient allowance for the acknowledged shared poor access to the property and that the property is valued slightly on the high side. That is particularly so in comparison with 5 Blackfarm Road, Kilmore which is only slightly smaller than the property, has similar access difficulties and yet has a capital value of £120,000. The tribunal however was not at all persuaded that the property is overvalued to the extent argued by the appellant.

THE TRIBUNAL'S CONCLUSION

On examining the facts of the matter and the written arguments and submissions, the tribunal's unanimous decision is that the appellant has succeeded in displacing the statutory presumption. The tribunal is of the view that, given the particular circumstances of the property, and having carefully weighed its advantages and disadvantages, a reduced capital value assessment of £128,000 (or £160,000 less 20% agricultural allowance) is fair and reasonable. Thus the Commissioner's Decision on Appeal is overruled, the appeal is allowed and the tribunal orders that the valuation list be altered accordingly.

Mr JEREMY MILLS, CHAIRMAN

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: