

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

**CASE REFERENCE NUMBER: 3/08**  
**BASIL G. BARNES and NOREEN IRIS BARNES- APPELLANT**  
**AND**  
**COMMISSIONER OF VALUATION - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Nessa Agnew**

**Members: Mr William Deddis MRICS and Mr Paul McMinn.**

**Belfast, 27 June 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 appellants' 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 appellants 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 appellants, by claim form dated 17<sup>th</sup> March 2008 appealed against the decision of the Commissioner of Valuation for Northern Ireland ("the Commissioner") on appeal dated 14<sup>th</sup> February 2008 in respect of the valuation of a hereditament situated at 24 Moneyrea Road, Ballykeel, Newtownards, County Down BT23 6BJ.

## **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**

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 14<sup>th</sup> February 2008.
2. A document entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Land and Property Services ("LPS") and submitted to the tribunal for the purposes of the tribunal hearing.
3. An undated letter received by the tribunal on 14<sup>th</sup> May 2008 from the appellants representing a further submission to the tribunal for the purposes of the tribunal hearing.
4. 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 24 Moneyrea Road, Moneyrea, Newtownards, County Down BT23 6BJ("the property"). The property is stated to be occupied by the appellants, 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.
2. The property is an inter-war, large, detached split-level bungalow of rendered block and tile construction with a single garage. The property is located on a rural roadside site within easy commuting distance of Belfast, Comber and Newtownards. The main dwelling house has a gross external area ("GEA") of 198m<sup>2</sup> and the garage has a gross external area of 34m<sup>2</sup>. The property has oil-fired central heating, two reception rooms, a kitchen, and three bedrooms over three floors. The property is set in large front and side gardens with views of the countryside. The house is close to the main road and it is accepted that it is difficult to exit the property with a car.
3. The appellant is stated to have purchased the property in June 2004 for the sum of £171,000. The capital value assessment is £280,000 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 four comparables in total, with all four being assessments together with sales particulars. A copy of the Commissioner's Statement of Case has been provided to the appellants and the appellants have responded thereto in their submission to the tribunal.
4. The price paid by Mr. and Mrs. Barnes in June 2004 was £171,000. The appellants purchased the property from the Northern Ireland Housing Executive under the scheme for the purchase of evacuated dwellings ("SPED"). The former occupant of the property was forced to leave the premises due to security considerations. The

Northern Ireland Housing Executive purchased the property for £232,000 in December 2002 from the former occupant. Under the terms of SPED the purchaser, i.e. the Northern Ireland Housing Executive, must ignore the impact of security issues on the value of the property. The property then was unoccupied until purchased by Mr. and Mrs. Barnes approximately eighteen months later. The property was placed on the market in the Spring of 2003 and the asking price was the price that the Northern Ireland Housing Executive had paid for the property i.e. £232,000. An advisory note was contained in the property particulars which set out the background to NIHE's ownership.

It was established therefore that the property had been sold in December 2002 to the Northern Ireland Housing Executive for £232,000 but when the Executive resold the property in June 2004, the property was purchased by Mr. and Mrs. Barnes for £171,000.00.

### **THE APPELLANTS' SUBMISSION**

The appellants, in summary, have made the following submission:-

1. The appellants argue that they bought the house in June 2004, on the open market, for £171,000 and it states in the Notice of Appeal that 'the capital value is supposed to be the "amount the property could reasonably have sold for on the open market on 1 January 2005"'. Their submission is that the actual price it was sold for in June 2004 i.e. £171,000 would be the most accurate guide to its value.
2. The appellants submitted that there are no similar properties in the area, and gave the example that the property was built in 1931 and had no cavity walls whilst the neighbouring houses had been built much more recently.
3. The appellants do not accept that the value of the property increased over a six month period by over 60%. They further submitted that the property was valued in June 2007 for mortgage purposes at £350,000, and contend that this was the basis for their valuation of £230,000 for the property, i.e. a £60,000 increase per year.

4. The appellants state that the Valuation and Land Agency staff (now the LPS) were at the property in 2004 when Mr. and Mrs. Barnes moved into the property and carried out an initial valuation at that juncture and therefore are fully aware of the value in June 2004.

## **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 £280,000. On behalf of the Commissioner it has been contended that having had regard to the comparables quoted and on the basis of the legislation, the statutory basis for valuation has been referred to and reference has been made to paragraph 7 of Schedule 12, in arriving at that assessment and the figure of £280,000 is a reasonable estimate of the Capital Value on 1<sup>st</sup> January 2005.

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. The appellants submitted that there are no similar properties in the area and stated that it was "a point confirmed by Valuation and Land Agency valuers." This was not supported by the evidence contained in the Presentation of Evidence which referred to four comparables-the only concession made in the Commissioner's written evidence is that the appellants' property "is slightly inferior in terms of its situation so close

to the roadway” but it is then stated that this was reflected in the assessment of the capital value of the property.

In examining the four properties that the Commissioner has said are comparable - all four are detached bungalows in a semi-rural location within a short drive from Belfast and other rural towns.

The property at 30 Comber Road was built circa 1955 and has a GEA of 158m and a single garage. It was sold on 1<sup>st</sup> January 2003 for £176,000 and has a capital value of £250,000 that is unchallenged.

28 Cadger Road was built circa 1970 and has a GEA of 136m<sup>2</sup> and a single garage. It was sold on 29<sup>th</sup> October 2002 for £180,000 and its capital value is £260,000 and is unchallenged.

The third property, 25 Moneyreagh Road, is on the same road as the Barnes’ property and is a more modern bungalow having been built circa 1990. It has a GEA of 196m<sup>2</sup> and has a double garage. The sale figure was £284,000 in August 2003 and its capital value is £340,000 and that figure has not been challenged.

The final property referred to in the Schedule is at 69 Ballykeel Road. It too was built circa 1990 and has a GEA of 157m<sup>2</sup> and a double garage. It sold in September 2003 for £246,000 and following a review its capital value was assessed at £275,000.

The tribunal, having examined the evidence provided by both parties is of the view that the appellants’ argument that there are no similar properties in the area, in light of the evidence contained in the Schedule, has not been supported by any independent evidence. The tribunal is of the view that the four properties contained in the Schedule are comparable. The tribunal notes that paragraph 7(2) of Schedule 12 refers to “comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised” and is of the view that the four properties selected by the LPS and contained in the Schedule comply with the statutory requirements of paragraph 7(2).

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 no express challenge to any of the comparable properties.


In dealing with Mr. and Mrs. Barnes's specific arguments, the tribunal is aware that the appellants bought the property for £171,000 in June 2004. However, given the background to the purchase and the fact that it was sold to the appellants by NIHE who had purchased the property under SPED, although it was sold on the open market the tribunal accepts the respondent's comments that the sale price in that instance was affected by the fact that the dwelling lay vacant for approximately eighteen months and that an advisory note was inserted on the front of the property particulars setting out the background to NIHE's ownership. It is accepted that this sale price is of limited assistance in assessing the rateable value and the tribunal does not accept the appellants' view that the price paid by them in June 2004 is an accurate guide to the property's value.

In relation to the appellants' second point, the tribunal is of the view that the argument that the appellants make is that there are no similar properties in this area. Their submission states that this point was already confirmed by the Valuation and Lands Agency valuers but no corroborating evidence to this effect was provided by the appellants. An example given by the appellants is that whilst the subject property was built in 1931 with no cavity walls, the neighbouring houses were built more recently and in the absence of any contrary evidence, that example is not disputed by the tribunal. However the Tribunal is of the view that the statutory test is to have regard to comparable properties and this point has been dealt with above. It is accepted by the Tribunal that the properties in the Schedule were built more recently than Mr. and Mrs. Barnes' property but that they are comparable. This point, without further evidence, did not assist the appellants.

In relation to the third point, the appellants point out that they do not accept that their property increased in value over a six month period by over 60%-that is from June 2004 when they purchased the property for £171,000 and 1<sup>st</sup> January 2005 when the property was valued at £280,000. The Tribunal has accepted that the sale figure of £171,000 in June 2004 is of limited assistance in assessing its rateable value. The appellants argue that the house was valued in June 2007 for mortgage purposes for £350,000.00. The legislation stipulates that the relevant capital valuation date is 1<sup>st</sup> January 2005 and further, a valuation for mortgage purposes is not a valuation in the terms of the legislation i.e. is not based on the property being sold on the open market by a willing seller.

Mr. and Mrs. Barnes' opinion that the property should have increased by £60,000 per year is not based on independent valuation evidence. The Tribunal is of the view that the valuation of £171,000 is of limited assistance and the Tribunal does not attach great weight to the mortgage valuation of £350,000 for the reasons provided above.

It is perhaps appropriate for the tribunal to state 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. In this case the appellants opted for documentation to be placed before the tribunal and did not appear before the tribunal. After a very careful examination of the facts of the matter and the submissions of both parties, the tribunal's unanimous decision is that the Commissioner's Decision on Appeal is upheld and the appeal is dismissed.



**Nessa Agnew, Chairman**  
**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties:**