

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

**CASE REFERENCE NUMBER: NIVT 18/08**

**DAVID McALPINE - APPELLANT**  
**AND**  
**COMMISSIONER OF VALUATION - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr Stephen Herron**

**Members: Mr Philip Murphy FRICS and Mrs Anne Lees.**

**Belfast, 23 October 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**

1. The appellant appeared at the tribunal and represented himself, accompanied by his son. The respondent was represented by Mr Patrick Gallagher and Mr Martin McGrath.
2. The property the subject of appeal is 21 Bushfoot Drive, Portballintrae, BT57 8YW. It is a mid terrace chalet bungalow built in 1989 with a gross external area of 93m<sup>2</sup>. The ground floor accommodation comprises 2 bedrooms, bathroom and wc. On the first floor there is an open plan lounge and kitchen with a patio door leading to a raised veranda. This is to take advantage of the

uninterrupted views over a golf course to the sea beyond. The property has economy 7 central heating and double glazing. Pedestrian access to the rear of the property is via a right of way across number 19 Bushfoot Drive. To the front of the property is a parking area which can accommodate two cars side by side.

3. On 26th June 2008 the Commissioner of Valuation issued a decision on appeal upholding the original capital valuation of the property of £150,000 as at 1<sup>st</sup> January 2005, the relevant capital valuation date. The Appellant appealed against that decision under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order").
4. The following documents were before the Tribunal;
  - 1 Notice of appeal received by Northern Ireland Court Service Tribunals Unit on 11th July 2008
  - 2 Commissioner's decision on appeal dated 26th June 2008
  - 3 Respondent's presentation of evidence
  - 4 Letter from the appellant dated 21st October 2008
  - 5 Photographs of numbers 1, 21 and 35 Bushfoot Drive, Ballintrae, produced by the appellant
  - 6 Sales brochure relating to 19 Bushfoot Drive
  - 7 Correspondence between the Tribunal and the parties.
5. After a short adjournment the tribunal informed the parties that a decision would be reserved. This notice confirms the decision of the tribunal and contains the reasons for the decision in accordance with Rule 19 of The Valuation Tribunal Rules (NI) 2007.

### **The Law**

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

*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 subparagraph of Article 39(1A) will always fall within that subparagraph.

(2) A hereditament falling (or deemed to fall) within paragraph (1 B) 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.”

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 appellant's submissions**

9. The appellant's notice of appeal listed 9 points as reasons for/grounds of appeal:-

- (i) The property is a mid-terrace house in a block of three similar houses
- (ii) Access to the rear of the property is via a right of way across number 19
- (iii) Car parking is limited to two spaces
- (iv) No internal inspection of the property was carried out by the appeal valuer
- (v) The end houses have the opportunity to extend the property or to erect a garage. The middle house does not have this facility.
- (vi) The end houses have space to park 5 or 6 cars
- (vii) Several of the properties have installed oil fired central heating, this is not reflected in the R.C valuation
- (viii) The original NAV of £175 was reduced to £165 on appeal, for the above reasons, in July 1990
- (ix) I request a reduction in the rateable capital valuation to £140,000 for the above reasons

10. The appellant indicated that he had been employed as a rating valuer for some 19 years before moving into private practice as a chartered surveyor.

### **The evidence**

11. As regards the evidence put before the tribunal there was common ground between the parties as regards some, but not all of the matters outlined at (i) to (ix) above. In relation to point (i) it was agreed that Bushfoot Drive

consisted of 6 rows of terraces, each row consisting of 3 properties. Numbers 1 and 3 Bushfoot Drive have been amalgamated as one property and have been assessed accordingly. Although number 5 is listed as a semi detached property, it has been assessed on the same basis as the other terraced properties in Bushfoot Drive. All of the other "odd numbered" terraced bungalows have similar views to that enjoyed from the appellant's property, and all have received a capital valuation of £150,000. Number 35 Bushfoot Drive (which is actually listed as no 34 on the valuation list) has been extended but has not been revalued. No 29 Bushfoot Drive was increased in valuation from 120,000 to £150,000 on review in April 2007. The respondent explained that the original lower valuation had been allocated as the data held on the property was incorrect. The revised valuation has not been challenged. The respondent indicated that this was the only property which was revised and that none of the other terraced properties have challenged the £150,000 valuation.

12. In relation to (ii) the respondent accepted that access to the rear of the appellant's property was only possible via a right of way across number 19. This is the same position with the other 4 mid terraced houses in Bushfoot Drive. The point was made by the respondent that as the market for the appellant's property was primarily buyers seeking a holiday home, the right of way for rear access would be less of an issue for this category of owner, or indeed a tenant if the property was rented out.
13. Regarding (iii) above, the respondent put forward the view that provision for 2 car parking spaces was typical of a house of the size and type of the appellant's property. The appellant took issue with this viewpoint, and was of the opinion that 2 spaces was not sufficient for a holiday home. He gave evidence that owners of mid terrace properties often had to use additional spaces in other unoccupied bays, especially when receiving visitors. In regard to the related point at number (vi) in his appeal, the appellant opined that end terrace properties had a distinct advantage and were more desirable as there was considerably more parking space. The respondent accepted that an end terrace could possibly accommodate 5-6 cars if those parked at the side were nose to tail, but maintained that 2 spaces was reasonable for a home of this type and that the additional parking potential was not a factor which should be taken into account in assessing the capital valuation of this particular type of property.
14. The respondent argued in relation to point (iv), that the statutory valuation criteria (paragraph 12 (1)) sets out an assumption that "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". The respondent submitted that the review of the property on appeal was therefore conducted in accordance with the statutory provisions, and that the appellant has not raised any specific point about the internal state of repair or fit out of his property.

15. As regards (v) it was submitted by the respondent that as regards each row of three bungalows, the end house could not be extended nor have a garage built because of the right of way. The parties agreed that a space of around 3 foot would have to be left after a side extension to allow access. The appellant gave evidence that even allowing this amount of space would leave ample room for extension, and the photograph produced by the appellant of no 35 Bushfoot Drive was referred to in this regard. Furthermore end terraces not affected by the right of way could be extended unfettered. The respondent retorted that the subject property could be extended at the rear. On this point the appellant argued that it would be unlikely that anyone would want to extend to the rear as the garden of his property was not very large, perhaps only 25 feet in depth.
16. There was a difference of opinion between the appellant and respondent as regards the approach in valuation which should be taken in assessing properties which have electric storage heating as opposed to any other form of central heating. The appellant's evidence was that an economy 7 system only provided background heating, and that it could not be considered a full heating system such as that provided by oil fired central heating. The appellant estimated that given a choice around 90% of people would go for an oil fired central heating system as opposed to an economy 7 system. The cost differential between oil fired central heating and economy 7 was estimated by the appellant to be around £2,000 for a property the size and type of that under appeal. The respondent indicated that for the purposes of capital value assessment no account was taken as to whether a property had oil fired central heating or economy 7, as both were regarded as full heating systems. The respondent referred to the statutory assumption that "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". The respondent suggested that the assumption might not apply if there was no heating system at all in a property, but stated that minor changes at the margins (such as the difference in value between oil and economy 7 central heating) were not to be taken into account in assessing capital value.
17. In relation to (viii) there was a degree of consensus between the parties. Although a copy of the order which varied the NAV of the property from £175 to £165 was not before the tribunal, it was accepted by the respondent that such a reduction was made on the basis of the matters referred to by the appellant. The respondent pointed out that the NAV was assessed on the basis of rental values as at 1976 levels i.e. what the property might have been expected to rent for at that time. The test now to be applied in determining valuation is to assess what the property might 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 respondent argued that because of this difference in the statutory valuation approach, the factors which were relevant in reducing the NAV on appeal did not necessarily impact on capital value assessment due to the assumptions in the legislation.

18. The appellant had requested a reduction in capital valuation to £140,000. In this regard the appellant made reference to number 19 Bushfoot Drive (the house over which he has the right of way), which he stated sold in the summer of 2003 for £120,000. The appellant produced a sales brochure for this property from R. Benson and Co estate agents which the tribunal heard had been prepared when the property had been marketed in 2001. The respondent stated that no record of the sale had been found on the Land and Property Services sales database or the Land Registry database. It was further stated by the respondent that the estate agent had been contacted and had no recollection of selling the property. The respondent submitted that without definitive evidence of the sale price of 19 Bushfoot Drive or proof that it was an arms length transaction, that there was no basis to use this property as a comparison. The appellant also referred to the valuations which were attributed to numbers 2-32 Bushfoot Drive on the Land and Property Services website. From the printout produced from the Land and Property Services website, the appellant had highlighted numbers 10, 26 and 32, which were all valued at £140,000. It was indicated by the appellant that these properties all had the same GEA as the subject property, yet they were detached bungalows with oil fired central heating and a garage. The tribunal observed that some of the other even numbered houses in Bushfoot Drive had different valuations. No further information was provided by the appellant or the respondent as to why there may be different valuations for the other properties, but it was agreed that they were all detached bungalows. Of particular note the appellant subsequently indicated that he did not wish to submit the document relating to the even numbered properties to the tribunal for consideration as his argument was more simplistic than comparing his property to the even numbered houses in Bushfoot Drive.
19. The respondent put two properties forward as sales comparables in the presentation of evidence. The first property, 29 Bushfoot Drive, is an end terraced house, which as one of the odd numbered houses is constructed in the same manner as the subject property and also enjoys sea views across the golf course. It is the same size as the property under appeal and also has economy 7 central heating. The property was initially assessed to have a capital value of £120,000, but this was increased to £150,000 on review. The respondent indicated that the property had been sold in July 2004 for £160,000. The second property was 3 Bushfoot Cottages, Portballintrae. This is a mid terrace property which is larger than the subject property at 108m<sup>2</sup>. The property has oil fired central heating. The capital valuation of this property was assessed as £170,000 and this has not been challenged. The property sold on 9 June 2004 for £135,000.
20. To assist in focusing the issues which the tribunal had to consider, the appellant was asked to summarise the thrust of the appeal. The appellant stated that it was his opinion that the limited parking and restricted

opportunity to extend of itself would make his property worth £10,000 less than an end terrace property in Bushfoot Drive. The appellant stated that it was his experience that a buyer would pay £10,000 more for an end terraced property over a mid terrace, if there was such a marked difference in car parking space and potential for extension.

21. The respondent replied to this assertion from the appellant by highlighting that in the 1990 appeal report it was noted that when the houses were originally purchased from the builder there was no difference in price between an end terrace and a mid terrace. The appellant confirmed that this was correct, but also made the point that when the developer released the properties he would have wanted to sell them as quickly as possible and this was the reason there was no price difference between an end and a mid terrace. The respondent stated that it was considered that the general valuation approach was that there was no difference between an end and a mid terrace property in the same row of terraces, except perhaps if the end terrace had an exceptionally large garden. It was submitted by the respondent that the opinion of the applicant regarding the difference in valuation between an end and mid terrace property was not evidence. The respondent indicated that the most cogent evidence before the tribunal was that of the sales comparables in the presentation of evidence and the fact that the developer had not made any distinction in price between end and mid terraced bungalows when they were sold.

### **The Tribunal's Findings**

22. The tribunal began its consideration of the evidence by taking account of the 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*". This was interpreted to mean that it is 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.
23. The tribunal did not agree with the respondent that the opinion of the appellant was of no evidential significance. The appellant is an experienced valuer, and the tribunal considered that weight could be attached to his opinion as regards principles of property valuation. The tribunal took credence of the evidence from the appellant that given the choice most people would prefer oil fired central heating to electric storage heating. It was also accepted that generally speaking, an end terrace property with increased parking facilities and opportunities to extend that a mid terrace property did not offer, would perhaps be expected to fetch a higher price than a mid terrace property in the same row.

24. This stated, the tribunal was mindful that the evidence had to be considered as regards the specific circumstances which applied to the property subject to appeal. The best evidence as regards what the subject property might have been expected to sell for on the open market in January 2005 was from the sale of comparable properties. The closest property to the appellant's in terms of size and location was 29 Bushfoot Drive. It had sold approximately 6 months before the capital valuation date for £160,000, £10,000 more than it was eventually assessed at. This property also had economy 7 heating and from the evidence before the tribunal the only significant difference between this property and the appeal property is that 29 Bushfoot Drive was an end terrace property. The property at 3 Bushfoot Cottages is also mid terrace, but it is larger and does not have the sea views that the subject property enjoys. Even though this property has a capital valuation of £170,000, it sold, again approximately six months before the antecedent date, for £135,000. On the one hand the sales information could be construed as providing support for the proposition that an end terrace property is more valuable than a mid terrace. Equally however the sale of 29 Bushfoot Drive for £25,000 more than 3 Bushfoot Cottages could also be interpreted as providing evidence of the premium that a buyer might attach to a property in the Bushfoot development which has uninterrupted sea views. The tribunal considered it reasonable to conclude that the market for properties in the Bushfoot development would be largely driven by those seeking a holiday home, and that sea views would be a factor which would increase the value of a property in this area. Properties in Bushfoot Drive such as the appellant's were specifically constructed to take advantage of the views across the golf course to the sea, and the tribunal considered that it was more likely that 29 Bushfoot Drive had attracted a higher price than 3 Bushfoot Cottages because of the views it afforded, rather than as a result of it being an end terrace property. The conclusion reached by the tribunal that a sea view is an attribute which has a significant bearing on the price which a property in the Bushfoot development might be expected to fetch is supported by the fact that the developer did not distinguish in price between the end and mid terrace bungalows which have sea views. The tribunal considered that a buyer who wanted a sea view may be willing to pay the same price for a property in Bushfoot Drive regardless of whether it was an end or mid terrace, and it was therefore not unreasonable for the respondent to make no difference in valuation between a mid terrace and an end terrace property.
25. In upholding the capital valuation figure it is clear that the respondent had considered the other issues raised by the appellant on appeal to the Commissioner of Valuation. The points put forward regarding the right of way and the fact that the property only had economy seven heating were considered, but ultimately disregarded by the respondent. The respondent relied on the assumptions set out in Schedule 12 of the 1977 Order (as amended) in this regard. Whilst the tribunal recognised that the appellant

had successfully appealed the rental value of his property under the "old" valuation system, it was considered that insufficient evidence had been produced by the appellant to lead to tribunal to find that the respondent had been wrong in the application of the current legislation.

26. The tribunal was thus satisfied that the approach of the Commissioner on appeal in assessing the capital value of the subject property was in keeping with the manner prescribed by Schedule 12 paragraphs 7 (and following) of the Rates (Northern Ireland) Order 1997.
27. The tribunal did not find that the respondent's decision on appeal was manifestly incorrect. The sale of 29 Bushfoot Drive for £160,000 approximately six months before the relevant valuation date, would suggest that a capital value assessment of £150,000 in relation to the property subject of appeal was not unreasonable.
28. It follows that the tribunal did not find that the appellant had produced sufficient evidence to displace the statutory presumption that "any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown".

### **Decision**

29. The tribunal's unanimous decision is that the Commissioner's decision on appeal is upheld and the appeal is dismissed.

**Mr Stephen Herron, Chair  
Northern Ireland Valuation Tribunal**

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