

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

CASE REFERENCE NUMBER: 4/09

JAMES KING

APPELLANT

AND

COMMISSIONER OF VALUATIONS FOR NORTHERN IRELAND

RESPONDENT

Northern Ireland Valuation Tribunal
Chair: Ms. Monica McCrory
Members: Mr. Tom Matthews and Mr. Ian Kyle

Belfast, 13th February 2009

DECISION

The unanimous decision of the tribunal is that the Commissioner's assessment of capital value in respect of the property is incorrect. The proper assessment of capital value taking into account all relevant factors and circumstances is £104,000 and the tribunal orders that the valuation list shall be amended accordingly.

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order").
2. The appellant by Notice of Appeal received by the Office of the Tribunal on 9th January 2009 appealed against the decision of the Commissioner on Appeal dated 22nd December 2008 in respect of the valuation of a hereditament situated at 4 Glen Cottages, Holywood, County Down, BT18 O EZ ("the property").

3. All parties to the Appeal had indicated that they were content to rely on written representations and 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 parties have given their consent in writing to that course.

The Law

4. The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”).
5. The tribunal considered the terms of Schedule 12 of the 1977 Order as amended which states as follows:
 - 5.1 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.
 - 5.2 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.

THE EVIDENCE

6. The following documents were before the Tribunal;
 - Notice of Appeal received by the Office of the Tribunal on the 9th January 2009 enclosing a letter dated 10th July 1997 from the Northern Ireland Housing Executive to the appellant
 - The Commissioner's Decision on Appeal dated 22nd December 2008
 - Respondent's "Presentation of Evidence" dated 2nd February 2009
 - Letter dated 4th February 2009 from the appellant by way of further submission to the tribunal enclosing a Memorandum of Sale in respect of a portion of garden to the rear of the subject property with map attached

- Document entitled “Response to additional evidence to NIVT” prepared on behalf of the Commissioner dated 9th February 2009
- Correspondence between the Tribunal and the parties.

All of these documents had been provided to all of the parties who had each been given an opportunity to consider and respond to them before being considered by the Tribunal.

The Facts

7. On the basis of the information before it the tribunal determined the following facts upon the balance of probabilities. The property:-
 - is a semi-detached house of brick construction with tiled pitched roof
 - has a gross external area (“GEA”) of 86m²
 - has partial economy 7 heating
 - is situated on the main Belfast to Bangor dual carriageway, approximately 2 miles from the town of Holywood.

The capital value was assessed by the District Valuer at 1st January 2005 (the antecedent valuation date, or “AVD”) at £175,000 and on appeal to the Commissioner the valuation was amended to £120,000.

THE RESPONDENT’S CONTENTIONS

8. The respondent’s contention is that in arriving at the capital value 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 respondent’s Presentation of Evidence. There are four comparables in total, two being capital value assessment only (stated to be “unchallenged”) and two being capital value assessments taken together with sales particulars having varying degrees of proximity in time to AVD.

THE APPELLANT'S CONTENTIONS

9. The appellant, in summary, made the following points in his submissions:-

- 9.1 The property had been considerably overvalued and the correct valuation should be £70,000
- 9.2 The property had been built in 1915 with a building cost of £75.
- 9.3 The Northern Ireland Housing Executive had valued the property in July 1997 at £35,000
- 9.4 The property was a labourers cottage with no damp course and damp walls
- 9.5 No identical cottage had been sold on the open market although 4 such cottages had been sold to property developers due to their large gardens and 3 had been sold by public auction
- 9.6 The comparable properties submitted by the Respondent were of superior quality
- 9.7 The property was situate very close to the A2 Bangor Road which resulted in high traffic noise
- 9.8 Two thirds of the rear garden to the property had been sold to a property developer.
- 9.9 The property was not connected to the main sewer and the septic tank was in the garden of 5 Glen Cottages

The tribunal will address further the detail of the appellant's and the respondent's respective contentions below.

THE TRIBUNAL'S DECISION

10. Article 54 of the 1977 Order enables a person to appeal to this tribunal against the decision of the Commissioner on Appeal regarding capital value. In this case the capital value has been assessed at AVD at a figure of £120,000. On behalf of the Commissioner it has been contended that that figure is fair and reasonable in comparison to other properties; the statutory basis for valuation has been referred to and reference has been made to Schedule 12 to the 1977 Order in arriving at the assessment.
11. In these matters there is a statutory presumption that, on appeal, any valuation shown in a valuation list with respect to a hereditament (in this case the property) shall be deemed to be correct until the contrary is shown. Thus, any appellant must successfully challenge and displace the presumption of the correctness of the valuation otherwise the appeal will not be upheld.
12. Looking at the general approach taken by the respondent to the valuation of the property, the tribunal saw nothing to suggest that the matter had been dealt with in anything other than the prescribed manner provided for by Schedule 12 of the 1977 Order.
13. In determining this case, the tribunal will examine the essential issue of whether or not the appellant has put forward sufficient challenge to the Commissioner's schedule of comparables and advanced sufficient evidence or argument effectively to displace the statutory presumption of correctness in regard to assessment of capital value.
14. Some of the arguments advanced by the appellant are not permissible under the statutory framework. The tribunal cannot take into account build cost of a property when assessing capital value as it does not form part of the statutory basis for capital value assessment contained in the 1977 Order.
15. The appellant purchased the property from the Northern Ireland Housing Executive in accordance with the Right to Buy scheme. The appellant enclosed the offer letter dated 2nd July 1997 wherein the Northern Ireland Housing Executive valued the property at £35,000. The tribunal was unable to attach any weight to this valuation as it was not considered sufficiently proximate in time to the AVD (1st January 2005) and the tribunal was not satisfied the valuation had been carried out in accordance with the statutory basis for capital assessment contained in the 1977 Order.

16. The appellant submitted that the property was built in 1915 and did not have a damp course and had damp walls. The appellant referred to a H.E. survey dated 2nd July 1997 being the offer to purchase letter from the Northern Ireland Housing Executive to the appellant. This correspondence refers to “suspected wood rot to wall plates in living room movement to floor” and further “the Executive has not carried out a structural or other survey of the property and other defects may exist”. The Respondent accepted that the property was built in 1915 but submitted that there was no evidence of damp during the course of their inspection (the nature of the inspection was not disclosed). The Respondent is entitled to rely on the statutory assumption and particularly paragraph 12 of Schedule 12 of the 1977 Order, that is “that the property 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 submits that the assessment of capital value was carried out in accordance with this assumption and that the comparable properties upon which the assessment is based are properties of similar age and character to the subject property. The tribunal will now deal with the appropriateness of the comparables submitted by the Respondent.

17. It was accepted by the Respondent that no similar cottages in the immediate vicinity had been sold on an individual basis in recent years. The Respondent did submit an Appendix to their Presentation of Evidence document details of the sale of Nos. 1, 2 & 5 Glen Cottages, Holywood but the tribunal did not attach any weight to this sale as it was a sale by public auction and all three properties were sold in one lot to a property developer.

18. The schedule of comparables submitted by the Respondent were as follows:-
 - (a) 45 Seahill Road, Craigavad. This is a semi-detached house with mains electricity, water and sewerage and partial heating with a GEA of 84m². It had a capital value at AVD (unchallenged) of £125,000.

 - (b) 53 Seahill Road, Craigavad. This is a semi-detached house with mains electricity, water and sewerage and partial heating with a GEA of 84m². It had a capital value at AVD (unchallenged) of £125,000.

 - (c) 39 Seahill Road, Craigavad. This is a semi-detached house with mains electricity, water and sewerage and full heating with a GEA of 84m². It achieved a sale price of £143,000 on 5th August 2005 and had a capital value at AVD (unchallenged) of £125,000.

- (d) 55 Seahill Road, Craigavad. This is a semi-detached house with mains electricity, water and sewerage and partial heating with a GEA of 84m². It achieved a sale price of £104,400 on 12th April 2005 and had a capital value at AVD (unchallenged) of £125,000.
19. The tribunal considered the foregoing information and made an assessment of the usefulness or otherwise of the evidence concerning potentially comparable properties. The appellant submitted that the comparables submitted by the Respondent (“Seahill Road Cottages”) were of superior quality to the subject property which was “Jerry” built during World War I. The Respondent submitted that the Seahill Road Cottages were over 75 years old and were of similar type and construction to the subject property. The Respondent further submitted that from their inspection of the property there were no obvious structural defects which would indicate that the subject property is significantly inferior to the Seahill Road Cottages. The appellant did not furnish the tribunal with any evidence in support of his contention as to the difference in the quality of construction of the properties. Therefore the tribunal was unable to make any comparative assessment in order to objectively determine what impact, if any, the quality of construction of the properties might have on the capital value of the properties.
20. The appellant submitted that the property is disadvantaged due to the close proximity to the Bangor Road and high traffic noise. The Respondent submitted that the capital value of the property acknowledged the property’s location and the negative impact on value caused by the main Belfast to Bangor carriageway. The Respondent further submitted that the comparables were similarly disadvantaged due to their proximity to the main Belfast to Bangor railway line. The appellant did not produce any objective evidence to enable the tribunal in any way to assess the affect the noise levels had on the capital value of the property or indeed to make a comparative assessment of the carriageway noise levels on the subject property and the railway noise levels on the comparable properties. The tribunal was therefore unable to determine that the subject property is more adversely affected by the noise from the carriageway than the comparable properties are by the noise from the railway.
21. The appellant submitted that he had sold two thirds of his garden to a property developer. The Respondent submitted that they had been unable to trace any such sale on their sales database which was based on SDLT returns from solicitors. The Respondent further submitted that the property had been assessed for capital value and no account had been taken of the development value the property might have in accordance with statutory assumption in the 1997 Order Schedule 12 paragraph 13, “the development has no development value other than value attributable to permitted development”. The Respondent submitted that the property after sale of the garden still had an average size garden similar to the comparables and accordingly the property had not been disadvantaged by the sale of the rear garden.

22. The tribunal was not persuaded that the fact the property was not connected to the mains sewer but rather was serviced by a septic tank would adversely impact on the capital value of the property. There was no evidence before the tribunal to suggest that an easement had not been reserved in favour of the subject property over the property No 5 Glen Cottages (where the septic tank was situate) to use the septic tank.
23. The tribunal was satisfied on the evidence before it that the comparables submitted by the respondent were direct and fair. They are of similar size, age and construction and within a one and a half mile radius of the subject property. The four comparables have unchallenged assessed capital values of £125,000 and No. 39 Seahill Road was sold on 5th August 2005 for £143,000 and No.55 Seahill Road was sold on 12th April 2005 for £104,000.
24. The tribunal was concerned looking at this evidence that a capital value assessment at AVD of £120,000 in respect of the subject property was too high. The most useful comparable to the tribunal's determination was No 55 Seahill Cottages being a cottage with a similar GEA (84m²) to the subject property (86m²) and also having partial heating. The sales evidence in respect of this property of £104,400 in April 2005, some three months after AVD. The tribunal found that this was persuasive evidence supporting a capital value assessment of the subject property of £104,000 at AVD.
25. The tribunal having examined all of the evidence and all of the arguments in this case concludes unanimously that the Commissioner's assessment of capital value in respect of the property is incorrect. The proper assessment of capital value, taking into account all relevant factors and circumstances, is £104,000 and the tribunal orders that the valuation list shall be amended accordingly.

Ms Monica McCrory, Chair
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties