

NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: 12/08

**SIDNEY AND MYRTLE WILLEY - APPELLANTS
AND
COMMISSIONER OF VALUATION - RESPONDENT**

Northern Ireland Valuation Tribunal

Chairman: Mr John Duffy

Members: Mr Gordon Jackson FRICS and Ms Louise Gordon.

Belfast, 29 August 2008

DECISION

The unanimous decision of the tribunal 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 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 claim form dated 14 May 2008 appealed against the decision of the Commissioner of Valuation for Northern Ireland ("the

Commissioner”) on appeal dated 16 April 2008 in respect of the valuation of a hereditament situated at 6, Downshire Park Central, Belfast BT6 9JN.

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”). It is perhaps desirable to set out some detail in respect of the statutory provisions applicable to the basis for valuation and the mechanism for appeals to this tribunal in this type of case. Material to the case, 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 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.”

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 appellants’ form of appeal to the tribunal (Form 3) and copies of various documents including the following:

1. The Commissioner’s Decision on Appeal dated 16 April 2008.
2. A document entitled “Presentation of Evidence” dated 28 May 2008 prepared on behalf of the Commissioner by Land and Property Services and submitted to the tribunal for the purposes of the tribunal hearing.
3. A letter dated 4 August received by the Tribunal from Mrs Willey 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 6 Downshire Park Central Belfast BT6 9JN (“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. The appellants are understood to be the ratepayers.
2. The property is a semi-detached house of brick and block construction with tiled pitched roof. It is believed to have been constructed circa 1955 and is located in a development of similar type properties off the Cregagh Road. The property has mains electric, sewerage and water services. It has oil fired central heating. Accommodation on the ground floor comprises two reception rooms, a kitchen and utility room. There are three bedrooms and a bathroom on the first floor. The property has a gross external area of 11 3m².
3. The capital value assessment of the property is £120,000 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, one being an assessment only and three being assessments together with sales particulars. A copy of the Commissioner’s Statement of Case has been provided to the appellant and the appellants have responded thereto in their submission to the tribunal.

THE APPELLANTS' SUBMISSION

The appellants' grounds of appeal are as follows:

1. 'The close proximity to the recycling depot particularly during the summer months and since the refuse is only collected every fortnight, which entails a large number of cars along Downshire Park Central, making it difficult to get out of our driveway'
2. 'This is further made more difficult by the second hand car business carried out no. 3 Downshire Park Central which involves a number of cars being parked on both sides of the road. I have a file regarding this matter which can be made available if necessary'
3. 'I consider the reduction of 5000 is not sufficient for the inconvenience we are experiencing.'

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 £120,000. 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.

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 Commissioners Statement of Case and the tribunal notes the evidence contained in the report as to comparables and concludes without difficulty that the correct statutory approach has been followed in this case.

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 set out above.

Having considered all the evidence and submissions the Tribunal finds and notes as follows:

1. In her letter dated 4 August Mrs Willey appeared to suggest that her main concern was with the existence of what had earlier been described as a second hand car business at 3 Downshire Park. That letter clearly states that 'If the car business was to cease we would be willing to accept the present valuation'. The Tribunal regards this statement by her as at least a tacit acceptance by her that her concerns about the suggested proximity of the property to the recycling depot are no longer being pursued. Despite this the Tribunal will deal with the specific ground of appeal as raised by the appellants. The District Valuer revised the assessed capital value from £125,000 to £120,000 to reflect the proximity of the property to the recycling depot. Similar allowances were applied to the valuations of various other nearby properties. None of the assessments on any of these properties has been challenged. We regard the reduction of £5,000 as reasonable in the circumstances.

2. The Tribunal regards the sale of 5, Downshire Park Central as particularly significant in this case. That property is next door to no. 3, from where the appellants suggest that a second hand car business is being conducted - and on the same side of the street as the recycling depot. It appears from the papers that the appellants' property is situated diagonally across from No.3. No 5 sold for £120,000 some six months prior to the valuation date. The market therefore clearly reflected the assessed value. This may also of course explain the suggestion in The Presentation of Evidence document that any such commercial activity at No. 3 would not impact on the capital value of the subject property.
3. The appellants maintained that there is an increased volume of parked cars in the street and they have experienced difficulty accessing their property on occasions. An inspection was carried out and whilst it was noted that there were a significant number of cars parked in the street there was no obstruction to the subject property
4. The Tribunal is satisfied on the basis of the evidence presented to it that the property has been valued in tone with similar properties in the development.

It is perhaps appropriate for the tribunal to state at this point 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. That can either be done (as has been chosen in this case) by documentation being placed before the tribunal, or alternatively this can be achieved by argument and proof at an oral hearing. However the tribunal, whilst certainly not bound by strict rules of evidence, does require proof of any contentions to a reasonable minimum standard and degree.

In this case, it is fair to say that the appellants' arguments are largely unsupported by evidence; the tribunal cannot arrive at conclusions of fact

without evidence. Having said that, the tribunal is conscious of the fact that appeals to the tribunal will largely be taken by persons without professional assistance or guidance and perhaps without financial and other resources to enable appropriate help and guidance to be sought. The tribunal is also conscious of its overriding objective to deal with cases fairly and justly, which includes dealing with cases in a proportionate manner regarding the complexity of the issues and the resources of the parties and seeking informality and flexibility in proceedings.

In this matter perhaps the appellant has not fully understood the task that faces any appellant in endeavouring to displace the statutory presumption. This task facing any appellant will be facilitated by the tribunal insofar as that is possible by the exercise of a flexible and accommodating approach on the tribunal's part. The tribunal however needs a minimum standard of evidence and proper argument upon which to proceed to discharge its functions. This case perhaps illustrates the potential difficulty faced by any appellant in relying only upon written representations. However, this is a choice given to any appellant and one that the appellant in this case has chosen to take.

Examining the facts of the matter and the arguments and submissions, the tribunal's unanimous decision is that the Commissioner's Decision on Appeal is upheld and the appeal is dismissed.

Mr John Duffy, Chairman
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: