

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

CASE REFERENCE NUMBER: 10/08

JOHN D FLECK- 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, 1st September 2008

DECISION

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 16th April 2008 is upheld and the appellant's appeal is dismissed.

REASONS

Introduction

This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, Mr Fleck, appeared and represented himself and Ms Gail Bennett and Mr Paul Boylan represented the Commissioner as respondent.

The appellant, by appeal form dated 3rd June 2008 (preceded by a detailed letter dated 24th April 2008) appealed against the decision of the Commissioner of Valuation for Northern Ireland ("the Commissioner") on

appeal dated 16th April 2008 in respect of the valuation of a hereditament situated at 156a Upper Knockbreda Road, Castlereagh, Belfast, BT6 9QE.

During the presentation of the respondent's case, the appellant indicated that he had not had sight of the respondent's documentation entitled "Presentation of Evidence". The tribunal expressed some concern at that fact and at the possibility that the appellant might be placed under a significant disadvantage in that regard. Thus the tribunal indicated that if the appellant either wished for more time to consider the documentation or, indeed, to apply to adjourn the matter, the tribunal was quite prepared to accommodate the appellant in that regard. However, after adjourning to allow the appellant sufficient time to read and consider this document, the appellant indicated that he wished the hearing to proceed. After some further discussion and the tribunal having again explained to and discussed with the appellant various issues arising from the foregoing, on the basis of the appellant's decision in that regard, the hearing proceeded.

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 appellant gave oral evidence and produced various documents to the tribunal. The tribunal had before it the appellant's letter of appeal dated 24th April 2008 and form of appeal to the tribunal (Form 3) and copies of various documents including the following:-

1. The Commissioner's Decision on Appeal dated 16th April 2008.
2. A document entitled "Presentation of Evidence" dated 18th July 2008 with supplementary page on comparables and their relativity prepared on behalf of the Commissioner by Land and Property Services and submitted to the tribunal for the purposes of the tribunal hearing.
3. Correspondence between the tribunal and the parties.
4. Correspondence produced by the appellant during the hearing.

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 156a Upper Knockbreda Road, Castlereagh, Belfast, BT6 9QE (“the property”). The appellant is the ratepayer.
2. The property is a temporary or mobile type home of sectional wooden construction. It is situated behind number 156 Upper Knockbreda Road and shares a laneway some 150 yards long with that property. The property has mains electric and water services and central heating. It was constructed around 1998 and has a gross external area of 97 m². There are no other residential properties of mobile or temporary home type construction in the immediate locality.
3. The background to the matter appears to be that some 10 years ago the appellant purchased the temporary home for around £30,000 and installed it on the property for he and his family to live in until such time as he was in a position to build a replacement permanent residence. In her evidence to the tribunal, Ms Bennett gave evidence that an allowance or discount of between 30% to 40% was appropriate for a home of temporary construction such as the property in comparison with comparable properties of traditional construction. However, taking into account the particular situation of the property on an elevated private site of some 0.7 acres with good views over Belfast, an allowance of approximately 30% had been given to reflect the construction in arriving at the subject capital value of £120,000 at Antecedent Valuation Date, that date of course being 1 January 2005 (“AVD”). Thus it was argued that, without this allowance of 30% being applied, the applicable capital value would have been around £180,000 to £190,000.
4. In her "Presentation of Evidence" Ms Bennett provided summary details of five 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 temporary construction. All of these capital value assessments were stated to be “unchallenged” and 4 of these were said to be supported by appropriate sales details.

THE APPELLANT'S SUBMISSIONS

The appellant made the submission that the property is merely a building of temporary construction consisting of a reception room with open plan kitchen, 4 very small bedrooms and a bathroom.

His main submission was that the temporary home on the property only had the benefit of an expired temporary planning permission and this fact, when taken with the temporary nature of the building, meant that the property was effectively un-saleable. Even if someone were to buy it, he submitted, they would find it almost impossible to get a mortgage because lenders will not lend on temporary home type constructions. He contended that the property was of little or no value.

The appellant dismissed the respondent's comparables because, firstly, some of them were bungalows of traditional construction and, secondly, they presumably had the benefit of planning permission. Thus the comparables were of much higher value. Additionally, one of the so called comparables was in Portavogie and two were in Ballyhalbert, both many miles away.

The appellant also gave evidence that he has to take his bins along the 150 yard shared laneway to the nearby dual carriageway for collection, which is inconvenient, and the shared nature of the laneway should also be taken into account when estimating the capital value of the property.

Finally, the appellant was dismayed by the fact that the Commissioners initial valuation of £8,500 on 1st April 2007 was then amended without explanation to the current disputed figure of £120,000 when he felt that the property was worth next to nothing for the reasons stated.

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 £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. 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. Indeed the appellant produced no alternative valuation evidence of his own nor was the tribunal persuaded by his challenges to the respondent's comparables.

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 tribunal noted the appellant's main argument as to the absence of lawful planning permission for the temporary building on the property. However, the tribunal is bound by Schedule 12, paragraph 15 of the 1977 Order to assume that there has been no relevant contravention of any statutory provision, requirement or obligation which would affect the capital value of the hereditament. Thus the tribunal must assume that the property has the necessary planning permission for what is there and the property therefore clearly does have a market value.

Furthermore, the tribunal is not persuaded that the temporary construction of the property makes it un-mortgageable and thus un-saleable. Given the many other advantages of the property, including its garden size, location and elevated site the tribunal must in accordance with Schedule 12, paragraph 7 of the 1977 Order estimate what the property might reasonably have realised if sold on the open market at AVD. Based on the Portavogie and Ballyhalbert mobile home comparables produced by the respondent, there is clearly a market for these types of properties.

Pursuant to Schedule 12, paragraph 13 of the 1977 Order the tribunal also ignores the development potential of the property in assessing the open market value.

In relation to the initial £8,500 capital value assessment of the property the tribunal finds that this was nothing more than a simple mistake by Land and Property Services occasioned by justifiable confusion as to the nature of construction of the dwelling-house.

Turning to the comparables evidence advanced by the respondent, the tribunal accepts that it was difficult to find close comparables for the property due to its temporary “mobile home” type construction. The tribunal therefore finds that the best comparables were the detached bungalows at numbers 77 and 91 Castlemore Avenue, near to the property. These are similar in size to the property, being 96 m² and 94 m² respectively. Both have unchallenged assessed capital values of £170,000. Number 77 was sold for £195,000 on 24th July 2006 and number 91 was sold on 19th August 2003 for £163,000. Both are of similar size and location to the property however both are of superior traditional brick and tile construction. These comparables were largely unchallenged by the applicant and the tribunal finds that a starting point capital value for the property is at least £170,000. The disadvantages of the shared laneway to the property are more than balanced out by the 0.7 acre elevated site with views that the property enjoys.

The question then for the tribunal is what allowance or deduction to make for the fact that the dwelling-house on the property is of temporary construction? The tribunal was persuaded by the analysis presented by the respondent showing a comparison of mobile home values elsewhere in Northern Ireland against comparably located detached bungalows of traditional construction. The appellant produced no evidence to challenge this analysis and the tribunal finds that an allowance of around 30% is fair and reasonable in this particular case.

THE TRIBUNAL'S CONCLUSION

The tribunal is very grateful to the appellant, Mr Fleck, for taking the time to come to the tribunal and to present his evidence and arguments in such a clear and forthright manner. Nonetheless, examining the facts of the matter and the arguments and submissions, the tribunal's unanimous decision is that the appellant has failed to displace 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, the capital value assessment of £120,000 is fair and reasonable. Thus the Commissioner's Decision on Appeal is upheld and the appeal is dismissed.



Mr JEREMY MILLS, CHAIRMAN
Northern Ireland Valuation Tribunal

TRIBUNALS UNIT
19 SEP 2008

Date decision recorded in register and issued to parties: