

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

CASE REFERENCE NUMBER: 25/08

WILLIAM ROBERT GARLAND - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Ms Siobhan Corr MRICS and Mr Peter Somerville.

Belfast, 28 November 2008

DECISION

The unanimous decision of the tribunal is that the tribunal concludes 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 £187,500 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"). The appellant appeared at the tribunal and represented himself. Mrs Claire White and Mr Martin McGrath appeared and represented the Commissioner of Valuation for Northern Ireland ("the Commissioner") as respondent.

2. The appellant, by Notice of Appeal received by the Office of the Tribunal on 9 September 2008 appealed against the decision of the Commissioner on appeal dated 12 August 2008 in respect of the valuation of a hereditament situated at 22 Hambleton Park, Dunmurry, Belfast BT17 9NA ("the property") wherein the Commissioner had declined to amend the valuation list for the property, confirming the capital value at a figure of £185,000, and commenting on the fact that this did not take account of a conservatory.

Preliminary considerations

3. This case is slightly unusual in that, whilst the appellant's appeal was against the decision of the Commissioner dated 12 August 2008, subsequent to that, by a District Valuer's Certificate of Valuation dated 12 September 2008, the capital value was amended to a figure of £195,000, that figure being to include a conservatory. By letter dated 22 September 2008, the appellant wrote to the Office of the Tribunal stating that he wished to appeal the additional valuation based on the addition of the conservatory.
4. At the outset of this appeal hearing, the tribunal addressed with the parties the revised valuation issue (in regard to the valuation of £195,000 which the appellant stated he wished to appeal to this tribunal) and enquired as to whether or not Mr Garland wished to apply to have these proceedings adjourned and to proceed with a fresh appeal. The issues in regard to whether this hearing ought to proceed or ought to be adjourned were fully discussed with the parties. Mr Garland indicated that he wished to proceed with this appeal, being fully conscious of the fact that the tribunal could, after having heard the evidence and determined appropriate matters of fact, make any decision as to capital value in respect of the property which the Commissioner could have made upon appeal, whether that represented a reduction or an increase in capital value. Thus the appeal proceeded on the basis of all of the evidence as to the state and circumstances of the property relevant for the proper assessment of capital value.

The Law

5. The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). The tribunal does not intend in this decision fully to set out the statutory provisions of Article 8 of the 2006 Order which amended Article 39 of the 1977 Order as regards the basis of valuation; these provisions have been fully set out in earlier decisions of the tribunal. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in the matter.

The Tribunal’s conclusions of fact

6. The tribunal heard oral evidence from the appellant and also from both Mrs White and Mr McGrath on behalf of the Commissioner and inspected relevant documents, some of which are further mentioned below.
7. The following facts were not in contention. The property:-
 - is a detached bungalow constructed in or about 1988
 - has a gross external area (“GEA”) of 120.5 m²
 - has a single garage of GEA 17m²
 - has two reception rooms, a kitchen, three bedrooms and a bathroom and a conservatory
 - is of brick and block construction with a tiled pitched roof
 - has the benefit of oil-fired central heating, mains electricity, water and sewerage services
 - is situated in a cul-de-sac in a locality composed of properties which are relatively similar in the construction and aspect and is approximately 6 miles from central Belfast.

The capital value was assessed as at 1 January 2005 (the antecedent valuation date, or “AVD”) at a figure of £185,000. Then, by a District Valuer's Certificate of Valuation dated 12 September 2008, the capital value was amended to a figure of £195,000, that figure being to include the conservatory.

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 in the usual form (photographs and summary particulars having been provided). There are nine comparables in total, four being capital value assessments only (stated to be "unchallenged") and five 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 respondent's evidence in respect of the comparable properties is inaccurate in a number of respects. That is so in terms of the numbers of internal rooms present in some of these comparables and also in regards to extensions and conservatories, these having been present or in place at AVD but not being included in the various comparables descriptions contained in the Presentation of Evidence.
- 9.2 The property suffers from excessive noise levels emanating from the M1 motorway in comparison to the comparables; this is so on account of the particular situation or location of the property and the prevailing wind direction and this problem appears to be worse dependant upon climatic conditions and the time of year. The volume of noise has increased over the last decade and that would present a significantly detrimental effect on the market value of the property.
10. The tribunal will address further the detail of the appellant's and the respondent's respective contentions below.

THE TRIBUNAL'S DECISION

11. 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 £185,000 (then revised to £195,000 after the appeal was commenced). 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 (Schedule 12 being the statutory basis of assessment of capital value - that is to say the amount, taking into account certain assumptions, which the property 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, being in this case AVD).
12. 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, otherwise the appeal will not be upheld.
13. 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.
14. The Presentation of Evidence and the schedule of comparables (mentioned in paragraph 6 above) was challenged by the appellant as to the accuracy of the information contained therein and also as to the appropriateness of the comparisons made by the respondent both in terms of the construction, attributes and circumstances of the comparables and also as to the significant effect or otherwise of motorway noise upon these comparables when compared to the especially detrimental affect of noise upon the property.
15. 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.

16. Dealing firstly with the issue of the state and circumstances of these comparables (and leaving aside the motorway noise issue for the moment) and addressing in the first instance the comparables sales evidence, the position would appear to be as follows:-

- (a) 41 Hambleton Park, Dunmurry. This is considerably larger than the subject property at GEA 153m² but otherwise in many respects similar. It achieved a sale price of £220,500 on 28 May 2004 and had a capital value at AVD (unchallenged) of £220,000;
- (b) 42 Hambleton Park, Dunmurry. This has a GEA of 117.84m²; it is in many respects similar. It achieved a sale price of £187,500 on 2 June 2004 (7 months prior to AVD) and had a capital value at AVD (unchallenged) of £205,000. The evidence was unclear as to whether or not a conservatory (which is now in place) was in place at that date of sale and thus did or did not affect the sale value. On balance the tribunal concluded that the conservatory was probably in place at the date of sale;
- (c) 5 Sandy Hill Avenue, Dunmurry. This is smaller than the subject property at GEA 100m² and also older (circa 1955). It achieved a sale price of £174,000 on 20 August 2004 and had a capital value at AVD (unchallenged) of £175,000;
- (d) 7 Sandy Hill Avenue, Dunmurry. This has a GEA 106m² and is older (circa 1955). It achieved a sale price of £175,000 on 18 October 2004 and had a capital value at AVD (unchallenged) of £175,000. The evidence suggests that the conservatory which is now in place was not present at that date of sale;
- (e) 3 Green Vale, Dunmurry. This is smaller than the subject property at GEA 89m² and a little older (circa 1970). It achieved a sale price of £185,000 on

1 September 2004 and had a capital value at AVD (unchallenged) of £170,000.

17. Turning then to the comparables (again leaving aside the noise issue for the moment) with no sales evidence, but merely with regard to the stated unchallenged capital valuations, the position would appear to be as follows:-
- (f) 36 Hambleton Park, Dunmurry. This is rather similar to the subject property. It has a GEA of 107m² but without a conservatory. It had a capital value at AVD (unchallenged) of £185,000;
 - (g) 37 Hambleton Park, Dunmurry. This again is rather similar to the subject property. It has a GEA of 107m². On the evidence, it appears to have a conservatory but has been valued without regard to that. It had a capital value at AVD (unchallenged) of £185,000;
 - (h) 1 Hambleton Park, Dunmurry. This is quite similar to the subject property. It has a GEA of 107m². On the evidence, it appears to have a conservatory but has been valued without regard to that. It had a capital value at AVD (unchallenged) of £185,000;
 - (i) 15 Green Vale, Dunmurry. This is again quite similar to the subject property. It has a GEA of 110m² but is of much more recent construction. It had a capital value at AVD (unchallenged) of £190,000.
18. The tribunal considered the foregoing information and made an assessment of the usefulness or otherwise of the evidence concerning potentially comparable properties. Attaching appropriate weight to the evidence and to various arguments advanced by the appellant concerning the disparity between the descriptions and the actual state and circumstances of various of these properties, the tribunal felt that the most useful of the comparables to the tribunal's determination were Hambleton Park, numbers 1, 36, 37 and especially number 42. The other properties carried a lesser value in terms of evidential weight. Evidentially, perhaps, the most useful comparable was 42 Hambleton Park. 42 Hambleton Park had achieved a sale price of £187,500 on 2 June 2004; it had an unchallenged capital value at AVD of £205,000.

19. The tribunal's concern was that (as has been discussed, taking account of the revised assessment to include the conservatory) looking at this evidence, a capital value assessment of £195,000 at AVD in respect of the subject property appeared to be too high. In addressing this concern, the tribunal was mindful of the totality of the evidence and especially the fact that 42 Hambleton Park, a property at GEA 117.84m², with a good conservatory (bigger than that of the subject property) but otherwise in many respects similar, had sold for £187,500 approximately 7 months prior to AVD. Thus, without further consideration at this point of the noise issue (to which the tribunal will return below), the tribunal is of the view that the applicable capital value for the subject property at AVD (taking into account the subject property's conservatory - which was of course excluded from the initial capital value assessment which is the subject of this appeal, but then included in the revision) is £187,500. For statutory purposes, the tribunal's adjudication as to capital value of £187,500 is based on all of the comparable evidence mentioned above.

20. Turning then to the motorway noise issue, this has proved to be somewhat problematical and is an issue that is not easily addressed by this tribunal on account of particular evidential difficulties. The tribunal fully understands the appellant's difficulty and the issues that require to be addressed in determining by what means properly researched and properly documented objective evidence as to noise impact may be placed before the tribunal in order to assist the tribunal in determining how the subject property stands in regard to the effect of motorway noise in comparison to other properties in the locality. It is worthwhile mentioning that Mr Garland did indeed introduce into his evidence to the tribunal at hearing a tape recording of the motorway noise and he endeavoured to demonstrate to the tribunal the reduction or increase in noise which he stated he had recorded as he walked from front to rear of the property. The tribunal noted Mr Garland's evidence and observations concerning his endeavours to reduce the effect of noise. Mr Garland also arranged for the tribunal to have sight of photographs of the motorway and how it stood in relation to the property and also with reference to a map of the locality.

21. After the oral hearing had concluded, the tribunal afforded to Mr Garland an opportunity to produce to the tribunal further written submissions in respect of the noise issue and the other issues, and to the respondent an opportunity to reply to any such. Mr Garland did write further to the tribunal and he made a number of

specific submissions and the respondent replied briefly to these points. The tribunal took careful note of these submissions. Whilst the tribunal has no doubt as to Mr Garland's very genuine and strongly-held subjective assessment as to the motorway noise levels and the adverse effect which Mr Garland believes substantially impacts upon his use and enjoyment of the property, the substantial difficulty for the tribunal in this case is to apply the statutory considerations and to determine an objective means by which any of this can be adjudged to affect the capital value of the property when regard is had to the assessed capital value of the subject property and also of the capital value of the comparables.

22. The appellant's case is that there is a significant difference between otherwise comparable properties in roughly the same locality on account of such factors as wind direction and the precise location of any property. The tribunal has inspected the maps produced and has noted Mr Garland's comments concerning the precise location of the property and the manner in which Mr Garland states that this location is more adversely affected by motorway noise and wind direction than other comparable properties in the immediate locality or in close proximity.
23. However, the difficulty is that the tribunal is obliged to apply the statutory considerations in considering and in being able to give appropriate weight to these contentions. In assessing the capital value of the property in this case, the tribunal has to bear in mind that regard shall be had to the capital values in the valuation list of comparable hereditaments in the same state and circumstances as the property. The tribunal has considerable sympathy with Mr Garland concerning the practical and perhaps financial implications inherent in addressing the evidential issue. Here Mr Garland, if he is to succeed, is tasked with producing sufficiently persuasive evidence to the tribunal concerning the effect of motorway noise (adverse or otherwise) not just upon the subject property but also in respect of the relevant comparables. The tribunal has to make a comparative assessment.
24. In the absence of sufficient evidence (sufficient to displace the statutory presumption concerning the specific noise issue and how that affects value) the only view that the tribunal can take of the matter is that it is unable objectively to determine that the subject property is more adversely affected by motorway noise than other comparable properties in the locality. Cases of this nature pose a difficulty for any appellant. The tribunal would certainly wish to record that it is conscious of the

difficulty faced by any such appellant; resources may not be sufficient or it may not be cost-effective to engage potentially expensive expertise in order to assist in presenting such a case. However, the tribunal is obliged on account of its statutory remit to approach the determination of Mr Garland's case in the manner in which it has done and on the basis of assessing the comparative evidence presented in this case.

25. Looking at all of the evidence and all of the argument in this case, the tribunal 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 £187,500 and the tribunal Orders that the valuation list shall be amended accordingly.

Mr James V Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: