NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: 11/10

JOHN MORRISON - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Members: Mr Tim Hopkins MRICS and Ms Angela Matthews

Hearing: 21 February 2013, Belfast

DECISION

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

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant had requested, at the time the appeal was instituted, that his appeal should be dealt with by oral hearing. The appellant, who had been originally represented by McCallum O'Kane, Solicitors, appeared at hearing with Mr Jonathan Speers MRICS as representative. The respondent at hearing was represented by Mr Patrick Gallagher MRICS together with Mr Michael McGrady MRICS.

2. The appellant, by Notice of Appeal received by the office of the tribunal on 30 June 2010 appealed against the decision of the Commissioner of Valuation on appeal dated 24 May 2010 in respect of the valuation of a hereditament situated at number YYY Seacoast Road, Ballymulholland, Limavady, County Londonderry BT49 0LF ("the subject property") whereby the non-exempt domestic capital value was determined at a figure of £128,000. The matter has had a regrettably lengthy history in coming on for a hearing and disposal since the appeal was first initiated. By Order made 19 July 2010 a Chairman of the tribunal extended time to deliver the Notice of Appeal, without objection on the part of the respondent. Then by Order made on 14 March 2011 a Chairman adjourned the hearing listed for 21 March 2011 for a further date to be fixed to permit the appellant to obtain an expert's report from a valuer, which report was then submitted to the tribunal in December 2012. The tribunal is not entirely certain as to the cause of the rather considerable delay, notwithstanding endeavours on the part of the tribunal Secretary over a considerable number of months to have the matter progressed to a hearing listing. An endeavour was then made by the tribunal Secretary to list the matter for hearing on 28 January 2013, but that date did not suit the appellant, who then requested a hearing date in February 2013. In any event, the matter now proceeds to an oral hearing.

3. At the outset of the hearing the tribunal sought to clarify with the parties the primary issues for determination. After some discussion with the appellant and his representative it was clear and that there were two primary issues. These were, firstly, the issue of whether or not the subject property ought to be rated as a farmhouse occupied in connection with agricultural land and used as the dwelling of a person whose primary occupation was the carrying on or directing of agricultural operations on that land. This is referred to below as the "agricultural use" issue. The second issue was whether or not the capital value of the subject property had been properly and correctly assessed as required under the statutory provisions. In regard to that latter, the appellant clarified to the tribunal that did seek directly to challenge the validity or appropriateness of the comparables evidence sought to be adduced on behalf of the respondent. This is referred to below as the "capital value" issue.

The Law

4. The statutory provisions concerning the capital value issue 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, as these provisions have been fully set out in earlier decisions of this tribunal. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in the matter in regard to the capital value issue. In regard to the agricultural use issue, the tribunal thinks that it is best to set out, briefly, the relevant statutory provisions. The 1977 Order (as amended) at Schedule 12, PART II, relates to farmhouses and provides as follows:-

> "1. The net annual value of a house occupied in connection with agricultural land or a fish farm and used as the dwelling of a person-
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> (a) whose primary occupation is the carrying on or directing of agricultural or, as the case may be, fish farming operations on that land; or
>
> (b) who is employed in agricultural or, as the case may be, fish farming operations on that land in the service of the occupier thereof and is entitled, whether as tenant or otherwise, so to use the house only while so employed, shall, so long as the house is so occupied and used, be estimated by reference to the rent at which the house might reasonably be expected to let from year to year if it could not be occupied and used otherwise than as aforesaid.
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> 2. The capital value of a house occupied and used as mentioned in paragraph 1 shall be estimated on the assumption (in addition to those mentioned in Part I) that the house will always be so occupied and used."

> The foregoing reference to "Part 1" refers to Schedule 12, Part 1, which Part provides for the general rules relating to the basis for valuation, including upon the basis of capital valuation.

In respect of the authoritative interpretation of the material statutory provisions in respect of the "agricultural use" issue, the tribunal notes the case of ***Ian Wilson v the Commissioner of Valuation [2009] NICA 30***, a judgment of the Northern Ireland Court of Appeal which is binding upon the tribunal. This case was alluded to by the respondent in this appeal. The principles to be derived from that authority are explored further below and were applied by the tribunal in reaching a decision in this matter.

The Evidence and Facts (generally)

5. The tribunal noted the written evidence and submissions. The tribunal had before it the appellant's Notice of Appeal to the tribunal (Form 3) and various documents including the following:-

- The Commissioner's Decision on Appeal dated 24 May 2010.
- A document entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Mr Patrick Gallagher MRICS and submitted to the tribunal for the purposes of the tribunal hearing.
- A document entitled "Presentation of Evidence" prepared on behalf of the appellant by Mr Jonathan Speers MRICS and submitted to the tribunal for the purposes of the tribunal hearing.
- Correspondence between the tribunal and the appellant's Solicitors, Messrs McCallum & O'Kane, and the appellant and the parties.

6. The following facts were not substantially in contention. The subject property consists of a hereditament consisting of a dwellinghouse situated at number YYY Seacoast Road, Ballymulholland, Limavady, County Londonderry BT49 0LF, this being located on a concrete laneway, approximately 0.3 miles off the Seacoast Road. The appellant states that he owns the entire laneway passing through his land and that he grants other parties an agreed right of way which serves a further three

houses. The appellant is understood to be the ratepayer. The subject property is described in the Presentation of Evidence as being a detached two-storey farmhouse, originally constructed in 1962, and extended on two occasions. It is noted that the appellant contends that the subject property has had only one extension, that being constructed in 1988, but that the appellant does confirm the gross external area mentioned below as being accurate. The gross external area ("GEA") of the dwellinghouse stated in the Presentation of Evidence is GEA 234m^2. The subject property has no garage. The construction is of cavity block with a slated roof. There are agricultural buildings to the rear. The subject property has mains electricity and water and is served by a septic tank. There is oil central heating. The windows are double glazed PVC. On the ground floor are a hallway, two living rooms, a sittingroom, a kitchen/dining room and a utility room/WC. On the first floor there are four bedrooms and a bathroom and WC. The capital value was initially entered into the valuation list at £110,000, less 20% reduction for agricultural use, being £88,000. The District Valuer then revised the valuation to take into account alterations made to the subject property, revising the capital value to £160,000, less 20% reduction to £128,000. This revised valuation was based on the dwellinghouse having a GEA of 234m^2. That valuation was subsequently amended by the Commissioner's Decision on Appeal, as mentioned above, to £145,000. These values are of course notionally assessed as at 1 January 2005 (that being the antecedent valuation date, or "AVD") for the purposes of the statutory rating scheme.

The Evidence and Facts concerning the Agricultural Use issue

7. From the unchallenged evidence, the subject property is located adjacent to farm buildings and the farm itself extends to some 84.94 acres (34.36 hectares). The tribunal noted the evidence of the location of the dwellinghouse and of the buildings which were stated by the appellant to be used in connection with farming activities, from the aerial photography available. The report from Mr Speers also contained, in appendices thereto, photographs of the dwellinghouse and of some buildings apparently in agricultural use located in relatively close proximity to the dwellinghouse, indicating from this photographic evidence the nature of these buildings and their location. The report also had appended a farm map, showing the location and size of the fields stated to make up the appellant's farm. The respondent, in general terms, took no issue with that evidence.

8. As one of the essential issues requiring to be determined by the tribunal, as a matter of material fact, is the nature and extent of any agricultural operations conducted by the appellant and any other work activities engaged in by the appellant, the tribunal took detailed evidence from the appellant concerning these matters and the tribunal also noted the documentary evidence available. From this evidence, the established facts are that the appellant engages in two occupations, in the sense of engaging in activities which could be said to be work-related and which were capable of producing an income or a means of livelihood. In one of these occupations, the appellant is an Inspector employed by Department of Agriculture and Rural Development ("DARD"). It is understood that the appellant has held that post for a number of years. The appellant confirmed to the tribunal that he was engaged in work as a DARD Inspector for three days in each working week, that work producing for him an income of £18,000 per annum gross, before deductions. His normal working days were Monday, Tuesday and Wednesday of each week. His working day with DARD normally began at 9.00 a.m. and ended at 5.00 p.m. It is understood that the DARD post was subject to the normal Departmental terms and conditions of service and that the post was pensionable. In regard to the appellant's other occupation, the appellant indicated to the tribunal that he spent a substantial amount of the remainder of his time, when not engaged in the work of the DARD post, working on the farm located adjacent to the subject property, but he did not maintain records of time actually expended in the farm work activities. The tribunal certainly understands the difficulty in estimation of comparative working time in that, in the DARD post, there would of course be regular Departmental working hours that could be readily identified and quantified, whereas in respect of farming activities it would not be the normal practice to keep a log or record of working time expended. The appellant did indicate in his evidence to the tribunal that his working day on the farm could commence at 6 a.m. and continue until darkness. The farm business claimed single farm payment and countryside management scheme care payments and apparently complied with all requirements in that regard. The appellant stated that the farm had been a viable unit for four generations of his family and that at no time had the house ever been considered anything other than a farmhouse. The appellant stated that he and his wife were responsible for all of the work on the farm. Accordingly, the tribunal endeavoured further to explore that issue with the appellant in reference to a declaration the appellant had made to Land and Property Services.

9. In that respect, the tribunal noted that the appellant had completed and had signed an agricultural usage enquiry form with Land and Property Services, dated 18 January 2010. In that form the appellant had declared that he was a "part-time farmer". He indicated that he was engaged in beef and horse breeding activities. He stated that the percentage of his gross income derived from farming was 40% and from other employment was 60%. He declared that the percentage of his working time spent in farming activities was 60% and in his other employment was 40% and that he was required to attend to the other employment for 22 hours each week. The tribunal assumes (although not expressly stated) that this latter was in reference to his DARD Inspector work, a post that he held at the time of the declaration and it is noted that the working time of 22 hours declared equates to the three days worked each week with DARD. When further questioned concerning the forgoing information relating to farming activities, the appellant indicated that horse breeding was a hobby which occupied very little of his time and indeed produced no income. The only other animal husbandry activity referred to in the declaration was beef farming, but the appellant also indicated to the tribunal that he kept store lambs. When further questioned about the income produced from farming activities, the appellant indicated to the tribunal that the income from this was quite variable from one year to the next, ranging in a "good year" up to 40% of his gross income and "down to nothing", as he put it (in a poor year). The 40% accordingly stated by the appellant in the form thus appears to have been the very maximum proportion of his income to be derived from farming on what could be described as a "good year".

10. In regard to the appellant's proportionate working time expended upon these two activities, the tribunal endeavoured to explore with the appellant the apportionment as had been declared by him in the agricultural usage enquiry form. It is to be noted that the appellant did not state at any time to the tribunal that this form had not been accurately completed by him or that the declaration therein had not been properly made by him. The tribunal, in examining this declaration with the appellant, endeavoured to transpose, in proportionate terms, the proportion of confirmed working time in the DARD post to that required for the agricultural operations. However the tribunal encountered some difficulty with the appellant when endeavouring to do so. This was so for the reason that the appellant did not appear to perceive or to accept the premise that this exercise, when properly conducted,

effectively resulted in a proportionally smaller amount of working time for the farming activities than that indicated by the appellant in his oral evidence to the tribunal. Accordingly the tribunal had to determine which of the two sources of evidence was the more reliable, either the evidence to be gleaned from the agricultural usage enquiry form and declaration or the appellant's subsequent oral evidence given to the tribunal. The tribunal preferred the evidence available from the documentation completed by the appellant, firstly, as the appellant did not state that this had been inaccurately completed by him, secondly, as this declaration had been completed in the appellant's own time and with an opportunity afforded to give the matter some thought, and, thirdly, that the information was provided in what was perhaps a more " neutral" context than the provision of evidence to the tribunal in the course of an appeal. Accordingly, the tribunal finds that the proportion of the appellant's working time engaged in farming activities would be, at most, 60% and in the DARD post, 40%.

THE SUBMISSIONS

11. In respect of the agricultural use issue, on behalf of the appellant it has been submitted that the largest proportion of the appellant's working hours are spent on the farm. It is contended that the facts support an interpretation of the statutory provisions which would enable the tribunal to assess the case on the basis that the subject property ought to be rated as a farmhouse occupied in connection with agricultural land and used as the dwelling of a person whose primary occupation was the carrying on or directing of agricultural operations on that land. If this were to be accepted by the tribunal, this would accordingly entitle the appellant to a proportionate reduction in rates payable on account of agricultural usage. The tribunal was referred in a submission to the appellant's evidence that by far the majority of the appellant's working time was expended in agricultural operations. In response to that particular submission, for the Commissioner it was submitted that from the appellant's evidence and the other evidence in the matter, the subject property was not a farmhouse occupied in connection with agricultural land and used as the dwelling of a person whose primary occupation was the carrying on or directing of agricultural operations on that land. The basis for the submission was a contention on behalf of the Commissioner that the appellant derived his main income from the DARD post. The respondent's representative referred the tribunal to the

evidence and suggested that, upon the proper interpretation of the facts as supported by the authority of ***Wilson v the Commissioner of Valuation***, the appellant's contention should be rejected.

12. In regard to the capital value issue, the submission made on behalf of the appellant by Mr Speers was that if the property were to be placed on the open market it could only be sold as one lot, with the exception of one field on the adjacent side of the Seacoast Road. There would be a distinct difficulty, it was submitted, in creating several different rights of way over the access laneway servicing the farmyard, farmhouse and other properties. The consideration of the dwelling as a separate entity would mean costly separation of services including water, electricity and sewerage, which were interlinked with the farmyard and lands. There was no formal arrangement in place for the extensive laneway which was shared with several separate land and homeowners; it was evident that the farmhouse, farmyard and lands where linked together. The report of Mr Speers referred to sales of what were stated to be comparable properties. The properties referred to were, firstly, 30 Knockduff Road, Aghadowey, Coleraine BT51 4DB which was stated to have been sold on 14 January 2005 for £125,000 and secondly, 1 Ardreagh Road, Aghadowey, Coleraine BT51 4JD which was stated to have been sold on 23 March 2005 for £70,000.

13. The submission made on behalf of the Commissioner, as respondent, in regard to the capital value issue was that, in arriving at the capital value assessment of the subject property, regard was had to the statutory basis of valuation. Thus regard was had to the capital values in the valuation list of comparable hereditaments in the same state and circumstances as the subject property. It was contended that the “comparables”, set out in a schedule to the Presentation of Evidence, were similarly circumstanced to the subject property and that these provided best evidence of value. None of the comparables had challenged their assessments. No direct sales evidence was put forward by the respondent. In the Presentation of Evidence there were five comparables identified in total, including the subject property with brief particulars stated and map location provided, but was no photographic evidence. The comparables were all located in relatively close proximity to the subject property, considering that this was a rural location, either close by or within 2 miles. The

respondent's listed comparables with respective details and capital value and assessments, in addition to the subject property, were as follows:-

1. 16 Point Road. GEA 254m^2 (Garage or motor house) MHS GEA 27.7m^2 Capital Value £185,000
2. 472 Seacoast Road. GEA 231m^2 MHS GEA 24.1m^2 Capital Value £175,000
3. 490 Seacoast Road. GEA 174m^2 (no garage) Capital Value £135,000 (less 20% agricultural) = £108,000
4. 155 Duncrun Road. GEA 248m^2 (no garage) Store GEA 19m^2 Capital Value £180,000 (less 20% agricultural) = £144,000

14. The appellant did not seek directly to challenge these comparables individually. The tribunal thus made its assessment as to the evidential value of these comparables in the determination of the case.

THE TRIBUNAL'S DECISION

15. Article 54 of the 1977 Order (as amended) 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 (consequent upon the Commissioner's Decision on Appeal) at a figure of £145,000. 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 especially reference has been made to Schedule 12 to the 1977 Order (as amended) in arriving at that assessment. The appellant's contentions are as outlined above. For the appellant it has been submitted that if the property were to be placed on the open market it could only be sold as one lot and that there would be a distinct difficulty in creating several different rights of way over the access laneway servicing the farmyard, farmhouse and other properties. For the appellant a submitted alternative valuation of £104,000 has been put forward and the appellant contends that the subject property ought to be rated as a farmhouse occupied in connection with agricultural land and that the capital value ought to be reduced upon appeal accordingly.

16. In dealing, firstly, with a determination of the agricultural use issue, the tribunal notes the authoritative interpretation of the material statutory provisions in the case of ***Ian Wilson v Commissioner of Valuation*** which judgment of the Northern Ireland Court of Appeal is of course binding upon the tribunal. The facts of that case bear something of a similarity to the instant case. ***Wilson*** also concerned an appellant with two distinct occupations. The first of these occupations was as an Assistant Director for Environmental Services with Lisburn City Council; the second occupation of Mr Wilson was as a self-employed farmer. The Court of Appeal in ***Wilson*** had to determine whether Mr Wilson's primary occupation was that of a farmer or as an employee of the Council. As in this case, in ***Wilson*** it was not in dispute that the dwelling was occupied in connection with lands which were used for agricultural purposes. In determining the matter, the Court of Appeal looked back to the earlier decision of ***McCoy v Commissioner of Valuation 1989 VR/35/1988*** that being a case where the Lands Tribunal had itself dealt with the same issue some years before. The Court of Appeal in ***Wilson*** cited with approval the judgement of then President of the Lands Tribunal, His Honour Judge Rowland QC, who identified that the term “occupation” had not got a technical meaning and therefore that it must be given its ordinary meaning; that which engaged the time and attention of a person. If the answer to this question was, “I have two occupations, farming and the civil service”, then a further question must be asked –“Which is paramount or more important or, in short, which of them is primary?” As has been made abundantly clear by the Court of Appeal in ***Wilson*** (per Higgins LJ) an objective test must be applied to that assessment and subjective matters are not relevant. As was, further, made clear by McCloskey J in ***Wilson***, the tribunal must carry out a primary fact-finding exercise, which exercise can expect to encounter scope for subjective claims and assertions from the ratepayer. McCloskey J anticipated that, by its very nature, much of this evidence would not be susceptible to objective proof or verification and would contain a substantial subjective element. Having found the material facts, at the second stage then any subjective claims and assertions of the ratepayer are no longer relevant; the tribunal must stand back and consider in a balanced and evaluative fashion whether, having regard to the fact-finding, the ratepayer’s livelihood in the main is derived from farming. Objectivity was the very essence of this exercise.

17. Accordingly the tribunal, in the light of the valuable guidance from ***McCoy v Commissioner of Valuation*** and ***Wilson v Commissioner of Valuation***, examined the primary material findings of fact established in the case. The tribunal noted that, whilst variable from one year to the next, when the farm income was taken into account the majority of the appellant's income (and in “bad years” something approaching the entirety of the appellant's income) was derived from the DARD post. Any income derived from farming activities could be next to nothing, upon the appellant's own concession, or could be as much as 40% in a “good year”. In regard to apportioned time expended, the tribunal preferred (in the absence of anything objective to assist and notwithstanding that this was the appellant's own subjective assessment) the evidence of the written declaration provided to Land and Property Services. Accordingly the tribunal accepts that up to 60% of the appellant's time could be engaged in farming activities. Objectively assessed therefore, upon the basis of this fact-finding, the tribunal had to determine if the ratepayer’s livelihood in the main was derived from farming. To quote again from His Honour Judge Rowland QC, “Which (occupation) is paramount or more important or, in short, which of them is primary?” Objectively assessing the matter, the tribunal's determination is that it cannot be said that the appellant's livelihood, in the main, was derived from farming or that farming is the appellant's primary occupation. This is so as a matter of ordinary, commonsense, objective, interpretation of the facts of the situation. This determination, accordingly, disposes of the first issue.

18. Turning then to a disposal of the capital valuation issue, the tribunal notes the statutory presumption contained within the 1977 Order, Article 54(3). This is an important matter for, on account of this statutory presumption, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown. This means that in order to succeed in the appeal, the appellant in this case must either successfully challenge and displace that statutory presumption of correctness, or the Commissioner's decision on appeal, objectively viewed, must be seen to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the capital value to an appropriate figure.

19. The tribunal saw nothing in the general approach taken to suggest that the matter had been approached for assessment in anything other than the prescribed manner

as provided for in Schedule 12 of the 1977 Order, as amended. Indeed, that general approach taken was not effectively challenged by the appellant.

20. The Commissioner's Statement of Case as set out in the Presentation of Evidence and the schedule of comparables, again, was not specifically challenged by the appellant. Instead, on behalf of the appellant Mr Speers sought to introduce sales evidence relating to two properties both of which had been sold in relevant proximity to AVD, being 30 Knockduff Road, Aghadowey, stated to have been sold on 14 January 2005 and 1 Ardreagh Road, Aghadowey, stated to have been sold on 23 March 2005.

21. The evidential value of this latter information was challenged on behalf of the Commissioner upon the basis that these two stated comparables introduced by Mr Speers were apparently or very possibly quite different to the subject property in state and circumstances (departing from the statutory basis for comparative capital valuation), that insufficient particulars had been provided to enable a proper comparison to be made, and that it was quite permissible to rely upon the comparables identified by the respondent upon the basis of unchallenged capital values as giving proper and reliable evidence of "tone of the list". It was contended that the capital value of the subject property was "in tone" with these identified comparables on the basis of this evidence.

22. In the light of this evidence and any submissions the tribunal examined the essential issue as to whether the appellant had put forward anything of sufficient weight effectively to challenge the evidence in the case emerging from the comparables, or other sufficient evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation.

23. The statutory provisions state that the capital value of the property shall be the amount which (on the statutory assumptions) 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. Further, in estimating the capital value regard shall be had to the capital values of comparable properties in the same state and circumstances as the property. The tribunal conducted an analysis of the appropriateness of selection and the weight to be attached to the various comparables, insofar as this related to the statutory basis of valuation.

24. The tribunal's analysis of the evidence from the respondent's selected comparables was that these were not inappropriate and that these were useful, to an extent in each case, in assisting with the determination of the appropriate capital value for the subject property. The appellant, as mentioned, did not seek to challenge this evidence, relying instead on the two alternative properties mentioned as comparables. It in regard to the usefulness or otherwise of these two alternative comparables, the tribunal accepts the respondent's submissions and is unable to attach much weight to this alternative evidence for a want of detailed information concerning these two properties and whether these are proper comparables for the statutory purposes, being in the same state and circumstances as the subject property.

25. Taking the evidence as presented to the tribunal, weighing this as to value and appropriateness, and noting the arguments and submissions, the tribunal's conclusion is that the appellant has not placed before the tribunal sufficient evidence, information and argument to enable the statutory presumption of correctness in respect of the capital value assessment to be displaced. The tribunal concludes that the Commissioner's assessment of capital value in respect of the subject property at a figure of £145,000 is not self-evidently or manifestly incorrect. On balance, the tribunal sees nothing of sufficient weight to displace the statutory presumption of correctness in respect of the Commissioner's capital value assessment.

26. The foregoing being the case, the appeal cannot succeed upon either of the two grounds submitted by the appellant. The Commissioner's Decision on Appeal is upheld and accordingly the appeal is dismissed.

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: