

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: 14/12

KEVIN O'LOAN - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

**DECISION OF PRESIDENT OF THE NORTHERN IRELAND
VALUATION TRIBUNAL ON APPLICATION FOR LEAVE TO
APPEAL TO THE LANDS TRIBUNAL**

I do not grant leave to the appellant to appeal to the Lands Tribunal, for the reasons set out below.

REASONS

Introduction

1. The appellant, by Notice of Appeal (Form 3) received by the office of the tribunal on 8 June 2012 appealed against the decision of the Commissioner of Valuation for Northern Ireland ("the Commissioner") on appeal dated 3 May 2012 in respect of the valuation of a hereditament situated at number 14 Brae Road, Knockanully, Martinstown, Ballymena, County Antrim BT43 7LY ("the property").
2. The matter was dealt with by way of written representations before the tribunal on 11 December 2012. By decision with reasons promulgated by the tribunal on 11 March 2013 ("the Decision") the tribunal's unanimous determination as set forth in the Decision was that the appeal should be dismissed, for the reasons stated.
3. The appellant (on the basis of correspondence from Mrs Terri O'Loan) has requested leave to appeal. A document ("the appeal submission") was sent by Mrs O'Loan on behalf of the appellant by email to the office of the tribunal ("the Office") and that was received on 28 March 2013. By email sent on 3 April 2013 to Mrs O'Loan by the Office the options either to apply for a review of the Decision or to seek leave to appeal to the Lands Tribunal were clarified. No reply to that email appears to have been received by the Office. In the event, nothing further appears to have been done by way of follow up until recent times. The matter has now been referred to me as President of the Northern Ireland Valuation Tribunal. My reading of

the appeal submission is that it constitutes a clear request made on 28 March 2013 on behalf of the appellant (by Mrs Terri O'Loan) for the granting of leave to appeal to the Lands Tribunal under the applicable procedure. The delay is regrettable, but the matter now proceeds at this point to be considered by me as President, in accordance with the applicable procedure, to determine whether or not to grant leave to appeal to the Lands Tribunal under the statutory provisions which are mentioned below. The appeal submission sets forth various points and identifies several submitted grounds, such as are therein stated. A copy of the appeal submission is appended to this leave determination.

4. Upon reading the appeal submission, in summary I draw from the content thereof the following points made in submission in regard to the granting of leave to appeal in the matter:-
 - (a) For the appellant it is not fully clear that it is indeed contended that the property is not a hereditament, for in the original appeal the appellant contended that the capital value ought to be £30,000, thus seeming to accept that the property ought to be rated. That is echoed, it appears, in the first point made in the appeal submission. However, for completeness, I am treating the submission as including that contention. The argument is accordingly made that the property is not in a habitable condition, that it could not easily be brought to a habitable condition, and that it is only economically prudent to demolish and to rebuild or develop. On that basis, the submission is that the capital value ought to be £30,000. A letter dated 30 May 2012 from Daniel McAlister & Son, Auctioneers and Valuers, has been referred to in support of that proposition.
 - (b) The submission is made that the capital value is grossly over-inflated and that the property would never have achieved half of that value on the open market. Again, it is not fully clear that it is contended that this latter is in reference to the antecedent valuation date ("AVD"), being 1 January 2005, to which AVD reference must be made for statutory purposes in assessment of capital value, but for the purposes of this determination it is assumed that that is so.
 - (c) The submission is made that the property is not comparable to others in the immediate location, given the state of disrepair, and that it is not in the same state and circumstances. It is assumed, for the purposes of this determination, that this latter is in reference to the comparables selected by the respondent and set forth in the Presentation of Evidence which is referred to in the Decision.
 - (d) The submission is made that the Decision makes contradictory references to the statutory assumption of average internal repair and fit out, mentioned in the Rates Order 1977 (as amended), and to the poor internal condition of the property by comparison not assisting the appellant because of the statutory assumptions. It is contended that a purchaser does not rely on statutory assumptions but rather upon facts (as regards condition of both the interior and the exterior).
 - (e) The submission includes a listing of various issues that would, it is contended, affect the 2005 capital value. This listing includes the statement that: (1) the

property has no foundations; (2) there is no mains water and permission would be required to bring mains water onto the property; (3) the property poses a serious fire hazard and contravenes building control regulations; (4) the property has a bathroom in an external shed; (5) the property has a septic tank that is not fit for purpose; and (6) that these are serious structural issues which would negatively affect the value of the property and that these and many other structural defects appear not to have been noticed by the Land & Property Services valuer.

- (f) It is contended that for the purpose of the hearing by the tribunal, the letter dated 30 May 2012 from Daniel McAlister & Son, Auctioneers and Valuers, had been provided, but that this was not referred to by the tribunal in the Decision.
- (g) It is contended that the tribunal refused to recognise the value of other properties in the locality that were not in a farmyard location which is stated to have been discriminatory in that farmhouses in remote locations were considered to be of higher value than those in the local area which most benefitted from rateable amenities.
- (h) The contention is made that the property can be cut off due to inadequate road clearing of snow in comparison to other local properties in Martinstown.
- (i) A matter is advanced regarding the effect of the statutory rating cap and also regarding rating relief for empty properties belonging to ministers of religion, which is contended to be discriminatory and divisive.
- (j) There is a reference made to a stated disparity between the initial appeal valuation made 29 February 2012 and to a subsequent valuation made 3 May 2012 in respect of the property and to the discrepancy between these and the independent valuation (of Mr McAlister) .
- (k) There is a reference made to the non-refunding of moneys stated to have been overcharged since the change in rateable value.
- (l) It is contended that there is neither transparency nor openness regarding methods of valuation, statutory assumptions, capital values, discounts and caps, and that it has been proved that the rateable value of the property ought to be no more than £30,000.

The Applicable Law

5. The statutory provisions relevant to my determination in the matter are to be found in the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”) and in the Lands Tribunal (Amendment) Rules (Northern Ireland) 2007 (“the Lands Tribunal Rules 2007”). These are as follows (in respect of the 2006 Order): -

“Appeal from decision or direction of Valuation Tribunal

54A. —(1) Any person who is aggrieved by any decision or direction of the Valuation Tribunal under Article.... 54(2) may, with the leave of—

- (a) the Lands Tribunal; or
- (b) the President of the Valuation Tribunal,

appeal to the Lands Tribunal. “

These are as follows (in respect of the Lands Tribunal Rules 2007): -

“ 4. In rule A1—

(a) -

(b) at the end there shall be added the following paragraphs—

“(4) an appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal shall be instituted by serving on the registrar a notice of appeal in accordance with Form AC within 28 days from the date of the grant of leave of appeal by the President of the Valuation Tribunal.

(5) A notice of appeal under paragraph (4) shall be accompanied by—

(a) a copy of the decision or direction of the Valuation Tribunal against which the appeal is made; and

(b) a copy of the decision of the President of the Valuation Tribunal granting leave to appeal.

(6) An application for leave to appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal may be made to the Lands Tribunal only where the applicant has been refused leave to appeal by the President of the Valuation Tribunal. “

The Determination

6. In making this determination, I note the identified issues mentioned above. My determination is as follows and this is so for the reasons stated below. I have identified each of the issues raised on behalf of the appellant and I have set out below these in sequence, with each contention or argument in italics, and my determination of each recorded immediately below.
7. *For the appellant it is not fully clear that it is indeed contended that the property is not a hereditament, for in the original appeal the appellant contended that the capital value ought to be £30,000, thus seeming to accept that the property ought to be rated. That is echoed, it appears, in the first point made in the appeal submission. However, for completeness, I am treating the submission as including that contention. The argument is accordingly made that the property is not in a habitable condition, that it could not easily be brought to a habitable condition, and that it is only economically prudent to demolish and to rebuild or develop. On that basis, the submission is that the capital value ought to be £30,000. A letter dated 30 May 2012 from Daniel McAlister & Son, Auctioneers and Valuers, has been referred to in support of that proposition.*

Upon the assumption that this issue challenges the Decision concerning the determination of the listing of the property as a hereditament, I note the manner in which the Decision has addressed this issue, as recorded in paragraphs 10 – 14. The tribunal in the Decision has made a brief record of material facts relevant to the issues and has conducted a succinct but carefully-considered analysis of the legal position in reference to the case of ***Wilson v Coll [2011] EWHC 2824*** and has

applied the tribunal's understanding of *Wilson v Coll* in a clear and comprehensible manner to the determined facts of the instant case. I do not discern any clear and evident error which would constitute a proper basis for granting leave to appeal. There is a specific point about the letter dated 30 May 2012 from Daniel McAlister & Son, Auctioneers and Valuers, to which I will return below.

8. *The submission is made that the capital value is grossly over-inflated and that the property would never have achieved half of that value on the open market. (It is assumed that this reference to "open market" is in reference to AVD, 1 January 2005).*

I note that the Decision has addressed the respective contentions of the parties in the matter. The tribunal in the Decision has set forth the relevant law at paragraphs 4 – 9 and particularly has identified the statutory basis of capital valuation. In the Decision at paragraphs 15 -18 the tribunal has briefly addressed the contentions of the parties and the facts and the application of the statutory comparative method of valuation. The tribunal's conclusion with particular reference to certain of the comparables and concerning the reasonableness of the comparisons is clearly recorded in paragraphs 16 - 18 of the Decision. Here I shall mention a specific point about the letter dated 30 May 2012 from Daniel McAlister & Son, Auctioneers and Valuers. It is correct to state, as has been stated in the appeal submission on behalf of the appellant, that the Decision does not expressly make reference to that letter. Whilst it is not essential that any tribunal shall refer to every item of evidence adduced, it is in some circumstances preferable that it does so in order to avoid the possible suggestion that the tribunal has disregarded relevant evidence in arriving at a determination. It is important to stress (see for example the following extract from the decision of the Court of Appeal in *Meek v Birmingham District Council [1987] IRLR 250* per Bingham LJ) that in giving its reasons "... a tribunal is not required to produce an elaborate formalistic product of refined legal draughtsmanship, rather the essential but fundamental requirement is that the reasons should enable the parties to know why they have won or lost...". I have accordingly to determine whether the failure of the tribunal to make express reference to the letter from Mr McAlister constitutes a proper ground for leave to appeal. The determination of that must follow from a proper assessment of the significance of the omission expressly to mention the letter and any conclusions which might properly to be drawn from that. I have noted the content of the letter from Mr McAlister which I observe makes no reference, either express or implied, to AVD valuations nor to the statutory assumptions which are required to be applied in this statutory rating regime. Mr McAlister's reference at paragraph four of the letter appears to relate to a contemporary indication of the property's development site value. That has no bearing upon the proper assessment of capital value at AVD under the statutory rating regime. The earlier references in the letter from Mr McAlister are to the poor condition of the property and the limited first floor head room and the fact that it would not pass building control and also to the disadvantage of the long shared laneway. Whilst I do not know if the tribunal did or did not take account of the content of the letter and opinion expressed, I do not see any omission in that regard as being essentially determinative of the matter and thus constituting a proper basis upon which to grant leave to appeal. There is no substantive error of law. This is so as the contemporary indication of the property's development site value is not relevant and the other issues were clearly canvassed before the tribunal in submissions other than the views expressed by Mr McAlister and the tribunal's determination was made in the light of these.

9. *The submission is made that the property is not comparable to others in the immediate location, given the state of disrepair, and that it is not in the same state and circumstances. It is assumed, for the purposes of this determination, that this latter is in reference to the comparables selected by the respondent and set forth in the Presentation of Evidence which is referred to in the Decision.*

I note that the Decision has addressed the respective contentions in the matter in regard to the comparables evidence. In the Decision, at paragraphs 15 - 18, the tribunal has briefly addressed the contentions of the parties and the facts and the application of the statutory comparative method of valuation. The valuation regime permits relevant adjustments to be made to the unadjusted values assessed upon the basis of the comparative method, on account of relevant factors. The tribunal in the Decision is clearly alert to that process and to the proper application of relevant considerations. I do not discern any error of fact or of law nor any other issue arising which would constitute a proper basis for granting leave to appeal.

10. *The submission is made that the Decision makes contradictory references to the statutory assumption of average internal repair and fit out, mentioned in the Rates Order 1977 (as amended), and to the poor internal condition of the property by comparison not assisting the appellant because of the statutory assumptions. It is contended that a purchaser does not rely on statutory assumptions but rather upon facts (as regards condition of both the interior and the exterior).*

I do not observe, if properly read, any contradiction emerging from the content of paragraph 16 of the Decision, or elsewhere on this point. It is indeed probably correct to state that any purchaser might not rely upon statutory assumptions but rather upon facts as regards the condition of both the interior and the exterior. However, the rating regime is grounded upon the statutory provisions mentioned in the Decision which do require the application of statutory assumption. The tribunal in the Decision has properly identified and has applied such statutory assumption in arriving at the determination. I do not discern from the foregoing any error of fact or of law nor any other issue arising which would constitute a proper basis for granting leave to appeal.

11. *The submission includes a listing of various issues that would, it is contended, affect the 2005 capital value. This listing includes the statement that: (1) the property has no foundations; (2) there is no mains water and permission would be required to bring mains water onto the property; (3) the property poses a serious fire hazard and contravenes building control regulations; (4) the property has a bathroom in an external shed; (5) the property has a septic tank that is not fit for purpose; and (6) that these are serious structural issues which would negatively affect the value of the property and that these and many other structural defects appear not to have been noticed by the Land & Property Services valuer.*

The tribunal in the Decision has evidently taken account of the respondent's case as set forth in the Presentation of Evidence, which evidence has included a detailed report including photographs of any relevant matters concerning the circumstances and condition of the property. The appellant, likewise, has had the opportunity of making very detailed written submissions including photographs which, it is clear, have been taken account of by the tribunal. The tribunal has made a determination in the light of this evidence and these submissions. I do not discern from the foregoing any error of fact or of law nor any other issue arising which would constitute a proper basis for granting leave to appeal.

12. *It is contended that for the purpose of the hearing by the tribunal, the letter dated 30 May 2012 from Daniel McAlister & Son, Auctioneers and Valuers, had been provided, but that this was not referred to by the tribunal in the Decision.*

See paragraph 8 above. There is no substantive error of law. The contemporary indication of the property's development site value is not relevant. The other issues were canvassed before the tribunal in submissions other than the views expressed by Mr McAlister. The tribunal's determination was made in the light of these. I do not discern from the foregoing any error of fact or of law nor any other issue arising which would constitute a proper basis for granting leave to appeal.

13. *It is contended that the tribunal refused to recognise the value of other properties in the locality that were not in a farmyard location which is stated to have been discriminatory in that farmhouses in remote locations were considered to be of higher value than those in the local area which most benefitted from rateable amenities.*

The tribunal in the Decision has set forth the relevant law at paragraphs 4 – 9 and has identified the statutory basis of capital valuation. In the Decision at paragraphs 15-18 the tribunal has briefly addressed the contentions of the parties and the facts and the application of the statutory comparative method of valuation. The tribunal's conclusion, with particular reference to certain of the comparables and concerning the reasonableness of the comparisons, is clearly recorded in paragraphs 16- 18 of the Decision. I do not discern from this any error of fact or of law nor any other issue arising which would constitute a proper basis for granting leave to appeal.

14. *The contention is made that the property can be cut off due to inadequate road clearing of snow in comparison to other local properties in Martinstown.*

This contention appears not to have been specifically advanced in the appeal. Thus the tribunal was unable to address the specific contention. I do not discern from this any error of fact or of law nor any other issue arising which would constitute a proper basis for granting leave to appeal.

15. *A matter is advanced regarding the effect of the statutory rating cap and also regarding rating relief for empty properties belonging to ministers of religion which is contended to be discriminatory and divisive.*

This contention appears not to have been specifically advanced in the appeal. Thus the tribunal was unable to address the specific contention. In any event, this reference appears to be to a matter of general rating policy and not to any issue that lies within the statutory jurisdiction of the Northern Ireland Valuation Tribunal. I do not discern from this any matter arising which would constitute a proper basis for granting leave to appeal.

16. *There is a reference made to a stated disparity between the initial appeal valuation made 29 February 2012 and to a subsequent valuation made 3 May 2012 in respect of the property and to the discrepancy between these and the independent valuation (of Mr McAlister) .*

The tribunal in the Decision has addressed an appeal against the decision of the Commissioner on appeal dated 3 May 2012. That has been explored by the tribunal and a determination has been made by the tribunal in the Decision. The observations mentioned above apply to the view set forth by Mr McAlister in his letter

dated 30 May 2012. I do not discern from this any error of fact or of law nor any other issue arising which would constitute a proper basis for granting leave to appeal.

17. *There is a reference made to the non-refunding of moneys stated to have been overcharged since the change in rateable value.*

This appears to be a reference to a matter of accounting policy and procedure and not to any issue that lies within the statutory jurisdiction of the Northern Ireland Valuation Tribunal. I do not discern from this any matter arising which would constitute a proper basis for granting leave to appeal.

18. *It is contended that there is neither transparency nor openness regarding methods of valuation, statutory assumptions, capital values, discounts and caps, and that it has been proved that the rateable value of the property ought to be no more than £30,000.*

The tribunal in the Decision has set forth the relevant law at paragraphs 4 – 9 and has identified the statutory basis of capital valuation. In the Decision at paragraphs 15 - 18 the tribunal has addressed the contentions of the parties and the facts and the application of the statutory comparative method of valuation. The tribunal's conclusion with particular reference to certain of the comparables and concerning the reasonableness of the comparisons is recorded in paragraphs 16 - 18 of the Decision. I do not discern from this any error of fact or of law nor any other issue arising which would constitute a proper basis for granting leave to appeal.

19. For the foregoing reasons, I do not grant leave to the appellant to appeal to the Lands Tribunal upon these issues.

Dated this 26th day of September 2013

James V Leonard, President
Northern Ireland Valuation Tribunal