

Northern Ireland Valuation Tribunal

Case Ref: 23/13

Mark Fairley - Appellant

Commissioner of Valuation for Northern Ireland – Respondent

Chairman – Mr Michael Flanigan

Members – David McKinney & Noreen Wright

Property at Flat B, 62 Railway Road, Coleraine.

Hearing: 16<sup>th</sup> June 2014.

**Decision:-**

The unanimous decision of the tribunal is that the appellant's appeal be dismissed and the capital value of the above apartment be affirmed as follows:

Apartment B, 62 Railway Road Coleraine at £32,500.

The appellant and respondent attended and gave evidence and the tribunal is grateful to them for their attendance and submissions.

The property is one of two adjoining first floor apartments with a common entrance built in the mid 1990's as part of the development of former hotel premises.

**The Law:-**

The statutory provisions are to be found in the Rates (NI) Order 1977 and as amended by the Rates (Amendment) (NI) Order 2006. It is not proposed to set out the legislative provisions here in full and all relevant statutory provisions and principles are fully considered by the tribunal in arriving at its decision in this case.

**Submissions & Evidence:-**

The evidence of the appellant was that the building which contained the two apartments had been in the possession of the Fairley family for many years. The premises, which had originally been a hotel, had initially been purchased by the appellant's father in 1990. An application to demolish the building was refused and

Mr Fairley was compelled to maintain part of the existing structure of the building. Planning permission was granted for the construction of a public house together with three apartments subsequently reduced to two apartments. Works commenced in or around 1993 and by 1996 the bar was finished and functional and the two apartments were fully fitted with kitchens and carpets ready to be let out. At this point Mr Fairley senior noticed a high level of sound coming from the public house. This was notwithstanding the fact that soundproofing had been provided for in the building control approved plans. There then followed a lengthy dispute between Mr Fairley senior, the architect and the building contractor. Ultimately the building contractor went into liquidation and Mr Fairley senior was forced to abandon the dispute in around 2002. In 2002 the appellant became involved in the family business and has sought to develop the family's core business of wine imports and the public house. The appellant has spent considerable time and energy in trying to find a way whereby the flats could be adequately fireproofed and soundproofed in order to become suitable premises to be let. The appellant had submitted to the tribunal an estimate from surveyors that the full costs of adequately soundproofing and fireproofing the two apartments would be in the region of £140,000 plus vat. The difficulties likely to be experienced by tenants of either flat are significantly greater since 2005 when the appellant applied for and obtained an entertainments licence which permits entertainment on the premises until 1am. The respondent submitted evidence that the property had been valued in line with other similar first floor apartments and that an allowance of 50% had been applied by reason of the fact that they were above licensed premises. The respondent submitted that difficulties with the letting of the apartment and any breach of statutory conditions could not be taken into account given the statutory assumptions contained in the 1977 Order and 2006 Order.

### **Decision.**

The 2006 Order requires the tribunal to assess the capital valuation of any premises on the valuation list. In making that assessment the tribunal is required by law to

apply certain statutory assumptions. For the purpose of this appeal two of the assumptions in the 2006 Order are of relevance:

12(1) that the hereditament is in an average state of internal repair and fit out having regard to the age and character of the hereditament and locality.

15(1) that there has been no relevant contravention of any statutory provision or any requirement or obligation whether arising under a statutory provision an agreement or otherwise.

The submission from the appellant was that the property should be removed from the valuation list because it did not comply with building control regulations, could not be let out in its current condition and that the costs of carrying out remedial works were entirely excessive and could not reasonably be undertaken.

The tribunal noted that this was not a case of premises that have fallen into disrepair or were at risk of becoming derelict. The development of the site has had a difficult history but it is the assessment of the tribunal that the problems which the appellant currently has stem in no small part from the original dispute over the completion of the apartments. For sound economic reasons the appellant has sought to build upon and improve the public house business. This has had the unfortunate side effect of making the problem with the apartments more difficult and more expensive to resolve. The problems which the appellant has to grapple with are considerable but the task which the tribunal has to conduct is to determine if the properties are hereditaments capable of valuation and to determine what the capital valuation is.

The tribunal noted that at one point the apartments had been completely finished and would have been let out had the soundproofing dispute not arisen. The tribunal was satisfied that the apartment is a hereditament for the purposes of valuation. It is in the nature of a statutory assumption is that the tribunal must treat the property as being subject to the assumption, whether the assumption is in fact true or not. The statutory assumptions being applied the tribunal was precluded from taking into account any breach of statutory regulations or lack of internal repair which might be preventing the property from being let out.

The evidence from the respondent supported the capital valuation awarded to the property and it was further noted that an allowance of 50% had been applied by the

respondent to take into account the presence of the licensed premises. The tribunal is satisfied that the capital valuation and the allowance were appropriate to the property and accordingly the appeal is dismissed and the capital valuation affirmed.

Signed: Michael Flanigan

Chairperson

Northern Ireland Valuation Tribunal

16-06-14