

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: NIVT2/16

JENNIFER ADGEY – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Alan Reid

Member: Mr Chris Kenton

DECISION ON REVIEW

The unanimous Decision of the Tribunal is that there are no proper grounds made out by the Appellant to enable the Tribunal to review the Decision of the Tribunal issued on 26 April 2017. Accordingly, the Appellant's application for review is dismissed and the Tribunal's Decision is affirmed.

REASONS

Introduction

1. This is an application for review of a Decision of this Tribunal ("the Decision") in respect of a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order") in respect of the property at 1A Orchard Place, Newtownards, County Down, BT23 7AE ("the Subject Property"). The Decision was issued to the parties by the Secretary of the Northern Ireland Valuation Tribunal ("the Tribunal") on 26 April 2017 following a consideration of the Appellant's written appeal by the Tribunal on 15 March 2017.
2. The Appellant by her representative, Mr Norman Russell MRICS, submitted an Application for Review dated 15 May 2017 requesting that the Tribunal review its Decision.
3. By letter dated 9 June 2017 Mr Russell on behalf of the Appellant requested an oral hearing of the review application. This oral hearing was conducted on 18 July 2017. The Appellant Jennifer Adgey attended and was represented by Mr Russell. The Respondent was

represented by Gail Bennett accompanied by Mr Jonathan Maybin of Land and Property Services (LPS).

The Composition of the Tribunal

4. This Application for Review was one of two such Applications by the Appellant considered by the Tribunal on 18th July 2017. At the outset of the hearings that morning it was explained to the parties that the lay member of the Tribunal panel which had issued both Decisions was not present. It was explained to the parties that in accordance with Rule 4 of the Valuation Tribunal Rules (NI) 2007 the proceedings could be considered and determined by the two remaining members of the Tribunal panel if both parties consented. It was further explained to both parties that neither party was obliged to consent and that if either did not wish to consent then the proceedings would be adjourned and relisted on a future date. Both parties were given an opportunity to consider the matter following which they each confirmed their consent to both hearings proceeding and being considered and determined by the two-member Tribunal.

The Law

5. The Valuation Tribunal Rules (NI) 2007 (“the Rules”), as amended provide at Rule 21 as follows in respect of the review of any Decision of the Tribunal:

“21(1) If, on the application of a party or its own initiative, the Valuation Tribunal is satisfied that–

- (a) its Decision was wrong because of an error on the part of the Valuation Tribunal or its staff; or*
 - (b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had good reason for failing to be present or represented; or*
 - (c) new evidence, to which the Decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been foreseen before then; or*
 - (d) the interests of justice require*
- the Valuation Tribunal may review the relevant Decision”.*

The Hearing and the arguments

- 6.1 At the outset of the hearing the Tribunal explained the nature of a review of a Decision of the Tribunal and explained that the onus lay upon the Appellant to establish that there existed one or more of the grounds specified in Rule 21(1) of the Rules upon which the Tribunal might proceed to review the Decision. If one or more such grounds were established then the Tribunal could proceed to review the Decision. If no ground for review was established then a review could not proceed.
- 6.2 The Tribunal clarified with the Appellant’s representative, Mr Russell, which of the statutory grounds were being relied upon. In the Appellant’s Application for Review dated 15 May

2017 Mr Russell had detailed the ground relied upon as being “in the interests of justice” and had stated –

“the Land and Property Services website shows the external size of every property with a Capital Value and this information is used in calculating the Rateable Value. While size is not the basis of assessment it is incorrect not to provide proper weight to this factor”.

6.3 The Tribunal explained that, if the Appellant was seeking to rely upon the “interests of justice” ground set out in Rule 21(1)(b) as referred to in paragraph 5 above, the Tribunal would be obliged to have regard to previous Decisions of the Valuation Tribunal and other statutory Tribunal jurisdictions in which it had been determined that the “interests of justice” ground ought properly to be construed fairly narrowly as applying, for instance, to situations such as where there had been some type of procedural mishap. Mr Russell confirmed on behalf of the Appellant that this was not what the Appellant was suggesting. Rather, he agreed that the reference in the Appellant’s Application for Review to proper weight not having been given to size of properties, fell more properly within the ambit of ground 21(1)(a) as it implied that the Decision was wrong because the Tribunal, in reaching that Decision, had erred in not giving proper weight to size as a factor. The Application for Review therefore proceeded on the basis that the Appellant was seeking to rely upon the ground set out in Rule 21(1)(a) - i.e. that the Decision was wrong because of an error on the part of the Valuation Tribunal or its staff.

The Appellant’s Submissions

7. Mr Russell made the following submissions supported by written arguments presented to the Tribunal at the hearing. The written documentation was also provided to the Respondent’s representative at the hearing.

7.1 Mr Russell referred to the Respondent’s submission to the Tribunal as recorded in paragraph 6.2 of the Decision and contended that the Respondent’s representative, Mr Maybin in his evidence to the Tribunal had in fact placed too much weight on the habitable size of properties and had used as comparable properties four properties situate at 18 North Street, 41 North Street, 20 Robert Street and 7 West Street, Newtownards all of which, whilst having similar sizes to the Subject Property, were located at distances ranging from 85 metres to 200 metres from the Subject Property.

7.2 Mr Russell’s evidence was that the Respondent had no reason to use those properties as comparables as there was “better evidence” available in respect of properties in the same block as the Subject Property. Mr Russell submitted details of the properties at 59, 61, 63, 65, 67 and 69 North Street, Newtownards together with their Capital Valuations and external measurements. In each case he set out an arithmetical calculation dividing the Capital Value of each property by its external measurement in square metres to arrive at a purported valuation per square metre. His evidence was that of these six properties the highest value per square metre arising from those calculations was a figure of £904.00 per square metre which when applied to the Subject Property’s external square meterage of 73 square metres

squared provided a Capital Value of £65,992.00. Mr Russell's submission was that the Capital Value of the Subject Property should be assessed at £65,000.00. During the course of his submissions on this issue Mr Russell volunteered that this "scientific" approach was "not necessarily a fair way to do it". He further accepted that in the Appellant's appeal the properties at 63, 65 and 69 North Street, Newtownards had not been included by the Appellant amongst the eleven comparable properties put forward on behalf of the Appellant for the consideration of the Tribunal.

7.3 Mr Russell also contended that the "tone of the list" should relate to properties within a relatively short distance of the Subject Property and not to property as much as 200 metres away from the Subject Property.

7.4 He further contended that LPS could have relied upon the same comparables which Mr Russell had relied upon in the original appeal and questioned why Mr Maybin on behalf of the Respondent had not used the same comparables.

7.5 When asked by the Tribunal to comment upon the statutory presumption set out in Article 54(3) of the 1977 Order that "any valuation shown in the Valuation List with respect to hereditaments shall be deemed to be correct until the contrary is shown" and to the statutory requirement as set out in Schedule 12 of the 1977 Order requiring that regard be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances, Mr Russell contended that it would be difficult to appeal any Valuation if only the tone of the list was to be taken into account. He told the Tribunal that he agreed that conducting a calculation "per square metre" was not the best way but expressed his view that the LPS computer system takes such a calculation into account.

7.6 Mr Russell concluded his submissions to the Tribunal by restating, that whilst Mr Maybin for the Respondent had asked the Tribunal to consider comparables based upon their size, age and house type, Mr Russell had focused more upon identifying comparable properties first by regard to their age and location and then seeking to "factor in" size.

The Respondent's Submissions

8. The following submissions were made on behalf of the Respondent:-

8.1 Mr Maybin for the Respondent disagreed that the comparables which he had submitted were not appropriate. He argued that some of the comparables were very close in location to the Subject Property. Others were further afield but were not very far away and in his opinion were still good comparables. He considered the best comparables to be the properties at 18 and 41 North Street.

8.2 Mr Maybin's evidence was that an approach which involved "breaking down" the value of comparable properties to a Valuation per square metre was not the correct approach to adopt. He contended that the "tone of the list" was not achieved by conducting such arithmetical calculations on individual properties by reference to their Capital Values and sizes.

- 8.3 Mr Maybin contended that the tone of the list was initially established arising from evidence of actual market value sales of properties in a given “neighbourhood” at the AVD. He asserted that a “neighbourhood” might comprise a number of streets.
- 8.4 When invited to define “neighbourhood” Ms Bennett contended that this would be defined by market evidence. It would not depend solely upon the distance of one property from another but would take account of the types of properties and their characteristics.
- 8.5 In response to Mr Russell’s question as to why Mr Maybin had not used the same comparable properties as those used by Mr Russell in his evidence, Mr Maybin stated that Mr Russell’s chosen comparable properties were larger than the Subject Property and therefore weren’t the best comparables.
- 8.6 In response to a question from Mr Russell as to whether LPS rely upon an arithmetical “per square metre” calculation of properties Mr Maybin and Ms Bennett emphatically denied that this was the case and Mr Maybin asserted that the tone of the list was not established by means of a “per square metre” calculation.
- 8.7 In response to questions from the Tribunal, Ms Bennett appeared to accept that some form of algorithm was used in relation to the domestic revaluation exercise. She told the Tribunal that it was difficult to explain how this algorithm was created but was adamant that its use did not affect the basic principle that Capital Valuations were arrived at as a result of evidence of actual sales at or around the AVD which in turn were used to establish the tone of the list.
- 8.8 In his closing submission, Mr Maybin asserted that the comparables relied upon by him were the best comparables for the Subject Property. He asserted that he had not dismissed from his considerations the properties put forward by the Appellant but felt that they were significantly larger than the Subject Property and that therefore the comparables which he had sought to rely upon were better comparables.

The Tribunal’s determination of the issues

- 9.1 Although this is an Application for Review of the Tribunal’s Decision in which the Appellant seeks to establish, under Rule 21(1)(a) that the Tribunal’s Decision “was wrong because of an error on the part of the Valuation Tribunal or its staff” in large measure the submissions of both parties have essentially amounted to little more than attempts to re-argue orally the issues originally presented to the Tribunal as written representations in reaching its Decision. The purpose of a hearing on an Application for Review is not to afford either party “a second bite at the cherry”. Rather, the Tribunal must direct its mind as to whether the Decision reached was wrong because of an error on the part of the Valuation Tribunal as referred to in Rule 21(1)(a) being the ground which the Appellant seeks to establish as the basis for a Review.
- 9.2 The burden on an Application for Review lies upon the Appellant to establish that the ground being relied upon has been established. The Appellant in her Application for Review contended that “while size is not the basis of assessment it is incorrect not to provide proper weight to his

factor”. The submissions on behalf of the Appellant sought to demonstrate that the Respondent had not provided proper weight to size as a factor in the Respondent’s submissions to the Tribunal. However, the Tribunal has been unable to identify anything in the Appellant’s submissions on her Application for Review to establish that the Tribunal itself failed to give proper weight to size as a factor in weighing the evidence presented to it.

9.3 A consideration of the Decision demonstrates that with regard to all of the comparables put forward – both by the Appellant and the Respondent – the Tribunal had carefully considered all of the sizes, ages and relevant characteristics of the various properties including the Subject Property. The Tribunal’s conclusions arising from its consideration of all of the evidence placed before it, are set out in paragraphs 7.7, 7.8 and 7.9 of the Decision and demonstrate a careful weighing of all of that evidence by the Tribunal. The respective sizes of the Subject Property and the comparables were expressly referred to in the Decision.

9.4 On this Application for Review, the Tribunal has carefully considered the evidence and submissions put forward by the Appellant and the Respondent. The Tribunal is not satisfied that the Appellant has demonstrated that its Decision was wrong because of an error on the part of the Valuation Tribunal or its staff. It is therefore the Tribunal’s unanimous determination that no ground has been established upon which the Tribunal can review the Decision.

9.5 Accordingly, it is confirmed that the Appellant’s Application for a Review of the Decision is dismissed and the Decision is affirmed.

Mr Alan Reid

Northern Ireland Valuation Tribunal

Date Decision recorded in register and issued to parties: 3 August 2017