

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: NIVT1/16

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 69 North Street, Newtownards, County Down, BT23 4DE ("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

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- (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. The Appellant's Application for Review dated 15 May 2017 detailed the following "Errors in Fact" -

1. *"Fact of no rear door ignored.*
2. *35A North Street is referred to by the Respondent as the best comparable on three occasions. However, it is factually incorrect to say that it does not have yard or garden as it has a rear door and concreted yard about 15 metres long with access and parking for a car.*

See photograph below"

A photograph was also included in the Application for Review.

6.3 The Tribunal referred the Appellant's representative Mr Russell to the four potential grounds for review as contained in Rule 21(1). He confirmed that he was seeking to rely upon ground (a) that the Decision was wrong because of an error on the part of the Valuation Tribunal or its staff arising from the alleged "errors in fact" detailed in the Application for Review.

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 contended that Mr Maybin on behalf of the Respondent accepted that Number 35A North Street, Newtownards was the best comparable for the Subject Property. Both 35A North Street and the Subject Property had a capital valuation of £90,000.00. Mr Russell contended that Number 35A North Street has a yard and rear door. He referred to the Decision in which the Tribunal had noted that at that time there had been a dispute between the parties as to whether or not 35A North Street had a rear yard and rear door. He pointed out that Mr Maybin in his written response to the Tribunal dated 16 June 2017 for the purposes of the Review hearing accepted that 35A North Street did have a yard and rear door.

7.2 Mr Russell drew attention to Mr Maybin's acceptance in his response dated 16 June 2017 that 35A North Street and the Subject Property were almost identical in size with 35A North Street having a gross external area of 111m² and the Subject Property having a GEA of 112m². He contended however that as 35A North Street had a rear yard and door, whilst the Subject Property did not, the Subject Property must of necessity have a lower Capital Value.

7.3 Mr Russell drew the Tribunal's attention to the provisions of Schedule 12 of the 1977 Order which require that in assessing the amount which the Subject Property might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant antecedent valuation date (AVD) which in this case was 1 January 2005, regard must be had to the Capital Values in the Valuation List of comparable hereditaments "in the same state and circumstances". He disagreed with Mr Maybin's contention that Land and

Property Services “consider any addition a yard or small garden may add in value for rating purposes is considered to be minimal and would be lost in the rounding of the Capital Value figure”. Mr Russell referred to his experience as a Valuer and Estate Agent working in the Newtownards area since the 1970s and contended that the value of a property without a rear door and yard must, of necessity, be less than the value of an otherwise similar property which has such a rear door and yard.

7.4 Mr Russell suggested that in ignoring the existence or otherwise of a rear yard or rear door to a property the Respondent was effectively failing to take account of the “actual state and circumstances” of individual properties.

7.5 Whilst agreeing that the tone of the Valuation List forms the basis for Capital Valuation Mr Russell did not consider that this should allow the presence or absence of a yard or garden to be ignored.

7.6 In response to a question from the Tribunal Mr Russell confirmed that there was a vehicular access to the rear of Number 35A North Street although access into the rear of the property by a car would be difficult due to the step at the rear gate apparent from the photographs provided. He asserted that access by a motorbike would be possible as a motorbike was apparent in the rear yard in the photograph.

7.7 Mr Russell was referred to the other comparable properties considered by the Tribunal in making its Decision and was asked to address in particular the matter of what error was alleged on the part of the Tribunal as referred to in Rule 21(A). Mr Russell contended that the other comparables referred to in the Decision also supported his argument for a reduced value for the Subject Property because those other comparables both also had Capital Values of £90,000.00 and had yards.

7.8 Mr Russell contended on behalf of the Appellant that the absence of a rear door and yard in the Subject Property justified a 5% reduction from its current Capital Value of £90,000.00 which, subject to rounding, in his view should result in the Capital Value of the Subject Property being reduced to £85,000.00.

The Respondent’s Submissions

8. Mr Maybin for the Respondent made the following submissions:-

8.1 Whilst agreeing that the property at 35A North Street was the best comparable to the Subject Property he explained that yards and gardens of hereditaments were not individually measured for the purposes of compiling the Valuation List. He explained that on the general revaluation exercise as at the AVD the Capital Values of properties were assessed on the basis of actual sales at that time providing a “basket” of values for similar properties which, in some cases, would have had yards or gardens and in some cases would not.

8.2 Mr Maybin asserted that the reference to “yards” or “gardens” in LPS Records and the Valuation List were descriptive only.

8.3 In response to a question from the Tribunal Mr Maybin informed the Tribunal that LPS did not use a “model” with particular characteristics against which an individual property or its Capital Value were judged. He acknowledged that LPS records the presence or otherwise of a yard or garden at a property but his evidence was that yards or gardens were not specifically taken into account in arriving at Capital Values for individual properties.

8.4 He contended on behalf of the Respondent that whilst Number 35A North Street was the best comparable for the Subject Property, both of the other comparables drawn to the Tribunal’s attention and considered by the Tribunal in its Decision were also good comparables as they were similar in size to the Subject Property. Although they both had yards he did not consider those yards to be significant to the valuations. He denied that the Respondent ignored the “actual state and circumstances” of the Subject Property and the comparables. He stressed that evidence of actual sales around the AVD had been used to establish the tone of the list and that this led to what he described as “a fair tone”.

The Tribunal’s determination of the issues

9.1 The Tribunal has listened carefully to the submissions of both parties which at times verged upon a re-arguing of the issues presented to the Tribunal in reaching its Decision. The Tribunal must remind itself and the parties that the purpose of this hearing is not to hear the Appellant’s appeal afresh. The Tribunal’s task is to consider whether the Appellant has established that its Decision was wrong because of an error on the part of the Valuation Tribunal as referred to in Rule 21(1)(a) being the ground upon which the Appellant seeks to rely in her Application for Review.

9.2 The appellant contends that there were two errors in fact in the Decision which in turn led to an error on part of the Valuation Tribunal resulting in a wrong Decision. The two “errors in fact” referred to by the Appellant are that the existence of a rear door in the Subject Property was ignored and that it was factually incorrect to say that 35A North Street did not have a yard or garden.

9.3 In its Decision the Tribunal considered all of the evidence regarding the three comparable properties as placed before it by the parties.

9.4 Consideration of the Decision demonstrates that the absence of a rear door at the Subject Property was not ignored. The Appellant’s submission in that regard is referred to at paragraphs 5.1 and 5.5. of the Decision.

9.5 Similarly, whilst the Respondent’s submissions to the Tribunal had been that the comparable property at 35A North Street did not have a rear yard or garden, the Tribunal in reaching its Decision had taken account of the conflicting evidence at that time in this regard and had recorded the Appellant’s submission that the comparable at 35A North Street had a rear yard. This is referred to at paragraphs 4.5.2, 5.6, 5.7, 6.3 and 7.7 of the Decision.

9.6 As recorded at paragraphs 7.8 and 7.9 of the Decision having considered all of the evidence placed before the Tribunal by the parties, including the matters referred to at paragraph 9.4 and 9.5 above on the balance of probabilities the Appellant's appeal was dismissed by the Tribunal.

9.7 The unanimous determination of the Tribunal is therefore that the Appellant has not established that the Decision was wrong because of an error on the part of the Tribunal and therefore no ground has been established upon which the Tribunal can review the Decision.

9.8 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