

**NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007
CASE REFERENCE NUMBER: NIVT 6/16**

**PAUL BERESFORD - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND -
RESPONDENT**

Northern Ireland Valuation Tribunal

**Chairman: Alan Reid, LL.B.
Members: Chris Kenton FRICS and Peter Somerville**

Date : 15th March 2017

DECISION

The unanimous decision of the Tribunal is that the Notice of Decision on Appeal of the Commissioner of Valuation for Northern Ireland of the Valuation of the property at Apartment 7, 43 Ranfurly Avenue, Bangor, Co Down, BT20 3SJ as contained in Valuation Certificates issued on 6th June 2016 and 20th July 2016 in the amount of £190,000.00 is upheld and the Appellant's Appeal is dismissed.

REASONS

1. Introduction

- 1.1 This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order").
- 1.2 By Notices of Appeal dated 2nd July 2016 and 30th July 2016 the Appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland ("the Commissioner") as set out respectively in Valuation Certificates dated 6th June 2016 and 20th July 2016 in respect of the Valuation of a hereditament situated at Flat 7, 43 Ranfurly Avenue, Bangor, Co Down, BT20 3SJ (the Subject Property).
- 1.3 By an Order of the Tribunal dated 1st September 2016 the President of the Tribunal ordered that as the respective Appeals concerned the same Subject Property valued in both instances at the same Capital Valuation figure the Appeals should be listed, heard and determined together by the Tribunal.

1.4 The parties to the Appeal had indicated that they were each content that the Appeal be disposed of on the basis of written representations in accordance with Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007 ("the Rules") and accordingly there was no appearance before the Tribunal by or on behalf of any of the parties.

2. The Law

The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). It is perhaps desirable to set out some detail in respect of the statutory provisions applicable to the basis for valuation and the mechanism for appeals to this tribunal in this type of case. Material to the case, Article 8 of the 2006 Order amended Article 39 of the 1977 Order (the basis of valuation) as follows:-

"8. —(1) In Article 39 of the principal Order (basis of valuation), for paragraph (1) there shall be substituted the following paragraphs—

" (1) - .

(1A) For the purposes of this Order the following hereditaments shall be valued upon an estimate of their capital value—

- (a) any dwelling-house;
- (b) any private garage;
- (c) any private storage premises.

(1B) - .

(1C) - .

(2) In Part I of Schedule 12 to the principal Order (basis of valuation), after paragraph 6 there shall be inserted the following paragraphs—

" *Capital value – general rule*

7. —(1) Subject to the provisions of this Schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in paragraphs 9 to 15, the hereditament 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.

(2) In estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised.

(3) The assumptions mentioned in paragraphs 9 to 15 shall apply for the purposes of determining whether one hereditament is a comparable hereditament in the same state and circumstances as another with the omission of sub-paragraphs (2) and (3) of paragraph 12.

(4) In sub-paragraph (1) "relevant capital valuation date" means 1st January 2005

.....

Capital value – the assumptions

8. In this paragraph and paragraphs 9 to 15— "development" has the meaning given by Article 2(2) of the Planning Order; "flat", in relation to a building, means a dwelling which is a separate set of premises, whether or not on the same floor, divided horizontally from some other part of the building; "incumbrance" means any incumbrance, whether capable of being removed by the seller or not, except service charges;

"permitted development" means development for which planning permission is not required or for which no application for planning permission is required;

"Planning Order" means the Planning (Northern Ireland) Order 1991 (NI 11);

"planning permission" has the meaning given by Article 2(2) of the Planning Order;

"rentcharge" has the meaning given by section 27(1) of the Ground Rents Act (Northern Ireland) 2001 (c. 5).

9. The sale is with vacant possession.

10. The estate sold is the fee simple absolute or, in the case of a flat, a lease for 99 years at a nominal rent.

11. The hereditament is sold free from any rentcharge or other incumbrance.

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

(2) The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

(3) In sub-paragraph (2) "relevant date" means 1st April 2007 or such date as the Department may substitute by order made subject to negative resolution for the purposes of a new capital value list.

13. The hereditament has no development value other than value attributable to permitted development.

14. —(1) A hereditament falling (or deemed to fall) within any subparagraph of Article 39(1A) will always fall within that sub-paragraph.

(2) A hereditament falling (or deemed to fall) within paragraph (1B) of Article 39 will always fall within that paragraph.

15. —(1) There has been no relevant contravention of—

(a) any statutory provision; or

(b) any requirement or obligation, whether arising under a statutory provision, an agreement or otherwise.

(2) In sub-paragraph (1) "relevant contravention" means a contravention which would affect the capital value of the hereditament."

The 2006 Order also amended the 1977 Order (regarding appeals) as follows:-

"Appeals from the Commissioner

33. For Article 54 of the principal Order there shall be substituted the following Articles—

" Appeal from decision of Commissioner

54. —(1) Any person, other than the Department, who is aggrieved by—

(a) the decision of the Commissioner under Article 49A or on an appeal under Article 51; or

(b) an alteration made by the Commissioner in a valuation list in consequence of such a decision, may appeal to the appropriate Tribunal.

(2) On an appeal under this Article the Tribunal may—

(a) make any decision that the Commissioner might have made;

and

(b) if any alteration in a valuation list is necessary to give effect to the decision, direct that the list be altered accordingly.

(3) On an appeal under this Article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.

(4) In this Order "the appropriate Tribunal" means—

(a) in relation to such appeals as may be prescribed, "the Valuation Tribunal";

3. The Evidence

The Tribunal heard no oral evidence but had before it copies of various documents including the following:-

3.1 Valuation Certificates issued on 6th June 2016 and 20th July 2016 by the Commissioner of Valuation in respect of the Subject Property.

3.2 The Appellant's Notices of Appeal dated respectively 2nd July 2016 and 30th July 2016 together with and in the case of each Notice of Appeal and additional sheet of written submissions from the Appellant.

3.3 The Order of the Tribunal dated 1st September 2016 referred to in paragraph 1.3 above.

3.4 A document entitled "Presentation of Evidence" submitted on behalf of the Commissioner by Jonathan Maybin MRICS of Land and Property Services and received by the Tribunal on 29th November 2016.

- 3.5 E-mails from the Appellant to the Tribunal Office dated 23rd November 2016 and 1st December 2016.

All of these documents had been provided to each of the parties who had each been given an opportunity to consider and respond to them before being considered by the Tribunal.

4. **The Facts**

Based upon the information before it the Tribunal determined, upon the balance of probabilities, the following facts:-

- 4.1 The hereditament is a second floor apartment constructed in approximately 2007 and situated at Apartment 7, 43 Ranfurly Avenue, Bangor, BT20 3SJ (“the Subject Property”).
- 4.2 The Subject Property is a single level self contained apartment in an apartment building with a brick façade and pitched tiled roof. It has double glazed PVC windows, full heating and all mains services with on site parking and is located in a suburban location in Bangor, Co Down. It has a net internal area or habitable space of 83 m². The Tribunal understood the Appellant to be the occupier and Rate Payer in respect of the property.
- 4.3 The Subject Property had originally been entered into the Capital Valuation List with a Capital Value of £190,000.00 and a Valuation Certificate was issued to that effect on 1st May 2008.
- 4.4 On 15th February 2016 the Appellant sought a revision of the Valuation suggesting that the Capital Valuation should be amended to £105,000.00. Following a review the District Valuer issued a Certificate on 4th May 2016 confirming the Capital Value of £190,000.00.
- 4.5 On 13th May 2016 the Appellant appealed the District Valuer’s Decision. Following a Review on behalf of the Commissioner for Valuation the Commissioner did not recommend any change to the Capital Value and a Valuation Certificate was issued on 6th June 2016 confirming the Capital Value of £190,000.00. A further Certificate confirming the Capital Value of £190,000.00 was issued on 20th July 2016 as referred to in paragraph 3.1 above.
- 4.5.1 In arriving at the Capital Value Assessment figure of £190,000.00, regard was had to the Capital Value Assessments of other properties in the Valuation List considered comparable. These comparables were set out in two separate Schedules to the “Presentation of Evidence” submitted on behalf of the Commissioner. There were a total of three comparables at the apartments at 43 Ranfurly Avenue and a further seven comparables from the surrounding locality. All of the proposed comparable properties were single level self contained apartments built in the period 2006 to 2008 in average states of external repair and with full heating.
- 4.5.2 All three of the comparable properties put forward on behalf of the Respondent at 43 Ranfurly Avenue, namely apartments 6, 10 and 11 had

a habitable space of 83 m². Apartment 6 was, like the Subject Property, located on the second floor. Apartment 10 was on the lower ground floor and Apartment 11 on the first floor. All three apartments had a Capital Valuation identical to the Subject Property in the sum of £190,000.00.

- 4.5.3 Of the seven additional comparables put forward on behalf of the Respondent from the surrounding locality, three of them were apartments at Strickland's Bay, Bangor (numbered 2, 3 & 5 Strickland's Bay), all of which were single level self contained ground floor apartments constructed in 2007 with full heating and a habitable space of 71 m², 12 m² smaller than the Subject Property. They all had a Capital Value of £180,000.00.
- 4.5.4 A further four comparable properties were put forward on behalf of the Respondent in the Glen Manor/Glen Court/Glen Gate area of Bangor, namely numbers 2 and 7 Glen Manor , 9 Glen Court and 22 Glen Gate. These were all single level self contained purpose-built apartments. 2 Glen Manor was a ground floor apartment with a habitable space of 83 m² and a Capital Valuation of £180,000.00. 7 Glen Manor was a second floor apartment with a habitable space of 85 m² and a Capital Valuation of of £180,000.00. 9 Glen Court was a second floor apartment with a habitable space of 81 m² and a Capital Valuation of £170,000.00 and 22 Glen Gate was a third floor apartment with a habitable space of 82 m² and a Capital Value of £175,000.00.

5. The Appellant's Submission

The Appellant had initially in his Notices of Appeal and associated documentation made a number of submissions but helpfully, in his e-mail of 1st December 2016 responding to the Presentation of Evidence submitted on behalf of the Commissioner, confirmed that he was relying "*entirely on one simple argument concerning square meterage comparison, as in my second Notice of 30th July 2016*". In summary, those submissions were as follows –

- 5.1 The Capital Value Assessment of the Subject Property when compared as to its size with other apartments in the same block and adjusted for the absence of a sea view should be £135,000.00.
- 5.2 The Appellant referred to apartments numbered 8 and 9 at 43 Ranfurly Avenue contending that these each had a habitable space of 126 m² and were therefore considerably larger than the Subject Property which had a habitable space of 83 m². He also contended that the apartments numbered 8 and 9 enjoyed sea view whereas the Subject Property did not. According to the Appellant the apartments numbered 8 and 9 each had a Capital Valuation of £225,000.00 and the Appellant contended that by conducting an arithmetical calculation comparing the respective habitable spaces and then applying a 10 % reduction for the lack of a sea view this would result in a rounded revised value of £135,000.00 for the Subject Property. Neither the Appellant nor the Respondent provided

photographs or further details of the apartments at 8 and 9, 43 Ranfurly Avenue but the Tribunal noted that the Respondent had accepted that these apartments were 43 m² and 45 m² larger respectively than the Subject Property.

- 5.3 In essence therefore the Appellant ultimately sought to justify a reduction in the Capital Value of the Subject Property to £135,000.00 by comparison with the Capital Values for the larger apartments at numbers 8 and 9, 43 Ranfurly Avenue, Bangor.

6. The Respondent's Submissions

6. In summary the following submissions were made on behalf of the Commissioner relevant to the contention put forward and ultimately relied upon by the Appellant -
- 6.1 The Capital Value Assessment of the Subject Property had been carried out in accordance with the legislation contained in the 1977 Order. In particular, as required by Schedule 12 of the 1977 Order regard was had to the Capital Values of other properties in the Valuation List.
- 6.2 It was contended on behalf of the Respondent that the comparables at apartments numbered 6, 10 and 11 at 43 Ranfurly Avenue, Bangor, the same apartment complex as the Subject Property, supported a Capital Valuation of £190,000.00 for the Subject Property.
- 6.3 The Respondent was also of the view that the suggested comparable hereditaments at the Strickland's Bay complex and Glen Manor/Glen Court/ Glen Gate, referred to in the Respondent's Presentation of Evidence were generally in tone with the Subject Property after taking into account the Respondent's submission that the Subject Property was in a superior location to the properties at Glen Manor/Glen Court/Glen Gate and a somewhat inferior location to the Strickland's Bay complex which Mr Maybin described as "*set back approximately 70 – 100 metres from the sea with uninterrupted views*". It was his submission that, as regards the wider tone of the Valuation List, the Strickland's Bay apartments with a habitable space of 71 m² and a Capital Valuation of £180,000.00 and the Glen Manor apartments with a habitable space of 83 to 85 m² and a Capital Valuation of £180,000.00 supported a Capital Valuation for the Subject Property with its habitable space of 83 m² at £190,000.00.

7. The Tribunal's Decision

- 7.1 Article 54 of the 1977 Order enables a person to appeal to the Tribunal against the decision of the Commissioner on appeal as to Capital Value. In this case the Capital Value for the Subject Property has been assessed at the antecedent valuation date of 1st January 2015 ("the AVD) at a figure of £190,000.00. On behalf of the Commissioner it has been contended that that figure is fair and reasonable when compared to other properties.

- The statutory basis for valuation has been referred to and, in particular, reference has been made to Schedule 12 to the 1977 Order in arriving at that assessment.
- 7.2 The Tribunal must begin its task by taking account of an important statutory presumption contained within the 1977 Order. Article 54(3) of the 1977 Order provides: *“On an appeal under this Article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown”*. The onus is therefore upon the Appellants in any case to challenge and to displace that presumption, or perhaps for the Commissioner’s decision on appeal to be seen to be so manifestly incorrect that the Tribunal must take steps to rectify the situation.
- 7.3 In this case the Tribunal saw nothing in the approach adopted to achieve the initial assessment as to Capital Value nor in the decision of the Commissioner on Appeal to suggest that the matter had been assessed on anything other than the prescribed manner provided for in Schedule 12, paragraphs 7 (and following) of the 1977 Order. The statutory mechanism has been expressly referred to in the Commissioner’s submissions to the Tribunal and the Tribunal noted the evidence submitted as to comparables. The Tribunal accordingly concludes that the correct statutory approach has been followed in this case in assessing the Capital Value.
- 7.4 The Tribunal then turns to consider whether the evidence put before it or the arguments made by the Appellants are sufficient to displace the statutory presumption. Those arguments have been summarised above.
- 7.5 Schedule 12 of the 1977 Order requires 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 AVD (in this case 1st January 2005) regard must be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances. The Respondent has put forward a number of comparable hereditaments the details of which are referred to above.
- 7.6 The Tribunal has carefully considered the submissions of both parties and in particular with regard to the comparable properties put forward on behalf of the Respondent. The Tribunal has also taken account of the details provided by the Appellant with regard to the apartments numbered 8 and 9 at 43 Ranfurly Avenue, Bangor. Whilst the information in relation to those properties by the Appellant was less detailed than the other comparable properties put forward by the Respondent, the Tribunal noted that the Respondent had confirmed the size and nature of those properties and the Tribunal therefore felt able to take them into account in its deliberations.
- 7.7 The Tribunal noted what appeared to be an inconsistency of approach on the part of the Respondent with regard to the matter of “sea views”. Mr Maybin in his Presentation of Evidence with regard to the apartments

numbered 8 and 9 Ranfurly Avenue stated that he could “confirm that these properties do not have an addition for sea view or a view of any kind. Indeed no apartment in subject block has an addition for any view, particularly orientation, terrace or balcony”. On the other hand, he appeared to accept that with regard to the Strickland’s Bay apartments “their location, set back approximately 70 – 100 metres from the sea with uninterrupted views” contributed to their desirable location and that a 10 % reduction in Capital Valuation was appropriate “to reflect no proximity/outlook toward the sea”. In approaching its task however the Tribunal was mindful of its obligation under paragraph 7 (2) of Schedule 12 to the 1977 Order which requires that “in estimating the Capital Value of a hereditament for the purposes of any revision of a Valuation List, regard shall be had to the Capital Values in that Valuation List of comparable hereditaments in the same state and circumstances as the hereditament whose Capital Value is being revised”. Whilst the Tribunal considered that all of the properties suggested by the Respondent and the Appellant as potential comparable properties (including the apartments numbered 8 and 9 at 43 Ranfurly Avenue) were useful and worthy of consideration in its deliberations, ultimately the Tribunal found the unchallenged Capital Values of the properties at apartments 6, 10 and 11 at 43 Ranfurly Avenue which were identical in size and location to the Subject Property to be particularly compelling. The Tribunal was therefore satisfied on the balance of probabilities that all of the comparable hereditaments put forward, but in particular the apartments numbered 6, 10 and 11 at 43 Ranfurly Avenue, Bangor, supported a Capital Valuation of the Subject Property at the AVD of 1st January 2005 in the amount of £190,000.00 as it presently appears in the Valuation List and that the evidence and submissions put forward by the Appellant are insufficient to displace the statutory presumption as referred to in paragraph 7.2 and 7.4 above.

- 7.8 Accordingly, the unanimous decision of the Tribunal is that the Appeal against the Notice of Decision of the Commissioner for Valuation as set out in the Valuation Certificates issued on 6th June 2016 and 20th July 2016 is dismissed.

**Mr Alan Reid, Chairman
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: 27 April 2017