

**NORTHERN IRELAND VALUATION TRIBUNAL  
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE  
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007  
CASE REFERENCE NUMBER: NIVT15/12**

**KENNETH BOYD - APPELLANT  
AND  
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Alan Reid, LL.B.  
Members: Sandy Moore and Pat Cumiskey**

**Armagh, 26<sup>th</sup> March 2013**

## **DECISION**

The unanimous decision of the Tribunal is that the Appeal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 3<sup>rd</sup> May 2012 is allowed and that the Capital Value of the Property at 26 Mullan Road, Tynan, Armagh BT60 4TB be assessed at £115,000.00 and the Tribunal directs that the Valuation List be amended accordingly.

### **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 a Notice of Appeal, apparently undated but received at the Tribunals Unit on 13<sup>th</sup> June 2012, the Appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland (“the Commissioner”) dated 3<sup>rd</sup> May 2012 in respect of the Valuation of a hereditament situated at 26 Mullan Road, Tynan, Armagh BT60 4TB.
- 1.3 The Appellant Mr Boyd appeared and was assisted in the presentation of his Appeal by his mother Kathleen Boyd.
- 1.4 Mr Mark Uprichard accompanied by Mr Michael McGrady appeared for and represented the Commissioner as Respondent.

## **2. The Law**

The relevant statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). The statutory provisions regarding the basis for valuation are contained in Article 8 of the 2006 Order which amended Article 39 of the 1977 Order and have been fully set out in numerous previous decisions of this Tribunal. The Tribunal does not therefore intend in this decision to fully set out the statutory provisions of Article 8.

## **3. The Evidence**

The Tribunal had before it copies of various documents including the following -

- 3.1 The Commissioner’s Decision on Appeal dated 3<sup>rd</sup> May 2012
- 3.2 The Appellant’s Notice of Appeal received by the Tribunals Unit on 13<sup>th</sup> June 2012.
- 3.3 A letter from Karl McElroy dated 12<sup>th</sup> June 2012 addressed to the Appellant.
- 3.4 A document entitled “Presentation of Evidence” submitted on behalf of the Commissioner by Mark Uprichard of Land and Property Services dated 18<sup>th</sup> December 2012.
- 3.5 An undated letter from Mrs Kathleen Boyd to the Tribunal bearing a fax transmission date 28<sup>th</sup> January 2013.
- 3.6 An undated letter from Michael McGrady for the Respondent in response.
- 3.7 Letter dated 23<sup>rd</sup> January 2013 from Tom Elliott MLA.
- 3.8 Letter dated 11<sup>th</sup> March 2013 from Mrs Kathleen Boyd.
- 3.9 Letter dated 22<sup>nd</sup> November 2006 from Valuation and Lands Agency to James Hanthorne.

At the commencement of the hearing of the Appeal both parties confirmed that all of these documents had been provided to each of them and that they had had an opportunity to consider them prior to the hearing.

## **4. The Facts**

On the basis of such information as was before it the Tribunal determined, upon the balance of probabilities, the following facts:-

- 4.1 The hereditament is a detached farm house type dwelling house situated at 26 Mullan Road, Armagh BT60 4TB (“the Subject Property”). The Subject Property was stated to be owned by the Appellant who the Tribunal understood to be the rate payer.
- 4.2 The Subject Property was constructed prior to 1919 and was stated to have mains water, electricity and a septic tank system. It is recorded in

- the Valuation List as having a gross external area (“GEA”) of 184 m<sup>2</sup>. It is located in a rural area approximately 2.6 miles from Tynan village.
- 4.3 The Capital Value Assessment of the Subject Property at the Antecedent Valuation Date (“AVD”), 1st January 2005, is £125,000.00. In arriving at that Capital Value Assessment figure, regard was had to assessments in the Valuation List of properties considered comparable. These comparables were set out in a Schedule to the “Presentation of Evidence” submitted on behalf of the Commissioner. There were a total of three comparables. Further particulars of the comparables were provided together with a photograph of one of them.
- 4.4 The Capital Value Assessments of the comparables were unchallenged.

## **5. The Appellant's Submission**

The Appellant, in summary, made the following submissions:-

- 5.1 The Capital Value of the property had originally been assessed at £104,000.00 as confirmed in the letter dated 22<sup>nd</sup> November 2006 from Valuation and Lands Agency to the former owner of the property, James Hanthorne. That letter had recorded the GEA of the property as 176 m<sup>2</sup> and had also recorded that the Subject Property had no central heating.
- 5.2 The Capital Value Assessment had subsequently been increased to £125,000.00. This had occurred when the Appellant had applied to the District Valuer to have the house removed from the Valuation List on the basis that it was uninhabitable.
- 5.3 The Appellant contended that the property was in a poor state of repair. Although the exterior had been painted which had the effect of making the property appear to be in better repair than it actually was, it required a new roof and chimneys, it suffered from rising damp and woodworm and all of the windows needed to be replaced. The property had no central heating and the electrical wiring was some 70 years old. Although it is vacant it is located on a “working farmyard”. The Appellant contended that the Capital Value Assessment did not reflect the poor state of repair of the property.
- 5.4 When invited to comment upon the three comparables put forward by the Respondent, the following submissions were made on behalf of the Appellant –
- 5.4.1 The property at 19 Balteagh Road, Armagh is occupied and in a good state of repair and maintenance, unlike the Subject Property.
- 5.4.2 The property at 10 Foyarr Road, Armagh was also well maintained and had double glazing and central heating. This was not the case with the Subject Property.
- 5.4.3 The Appellant did not make submission in relation to the third comparable property at 90 Clay Road, Killylea because neither the Appellant nor the Appellant’s mother were familiar with it.

- 5.5 Mrs Boyd had however referred in her correspondence to the Tribunal to a dwelling at No 28 Mullan Road which she contended was occupied and well maintained and had central heating. This property has a Capital Value Assessment of £78,000.00 in the Valuation List and it was contended on behalf of the Appellant that this was a more suitable comparable.
- 5.6 Mrs Boyd on behalf of the Appellant also drew the Tribunal's attention to the letter of 12<sup>th</sup> June 2012 from Karl McElroy, Chartered Surveyor. In that letter Mr McElroy set out his view that the property required a full refit costing in the region of at least £100,000.00 and that it would make more sense to construct a replacement dwelling. Accordingly he valued the property as a replacement building site in the region of £30,000.00. He further expressed the view that if the property were in a "livable state" then an approximate valuation would be around £70,000.00.

## 6. **The Respondent's Submissions**

In summary, the following submissions were made on behalf of the Commissioner -

- 6.1 The Capital Value Assessment of the Subject Property had been carried out in accordance with the legislation contained in the 1977 Order and in particular paragraphs 7 and 9-15 inclusive of Schedule 12 to the 1977 Order. In doing so, the assumptions set out at paragraphs 9-15 of Schedule 12 were applied and in particular the assumptions set out in paragraph 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 its locality*" and 12(2) that "*the hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date*" (the relevant date being 1<sup>st</sup> April 2007). It was further submitted on behalf of the Respondent that in assessing the Capital Value of the Subject Property regard was had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances as required by the provisions of Schedule 12.
- 6.2 Mr Uprichard on behalf of the Commissioner confirmed that the Capital Value had initially been £100,000.00 but that when the house was discovered to be vacant and no longer occupied by a farmer, the Agricultural Allowance previously applied had been removed which had the effect of increasing the Capital Value to £125,000.00. Mr Uprichard told the Tribunal that the Capital Values appearing in the Capital Value list were shown net of any Agricultural Allowance and that this sometimes led to confusion. He confirmed that although the Subject Property was described as a detached farmhouse, Agricultural Allowance was no longer applicable.

- 6.3 In response to questions from the Tribunal, Mr Uprichard confirmed that the Subject Property was located at the end of what he described as a “third class road”. He confirmed that the comparable at 90 Clay Road Killylea was on the roadside and was an old style farmhouse which has the benefit of central heating. It is however not in a farmyard situation. He further confirmed that the comparable at 10 Foyarr Road Armagh was on a roadside and was assumed to have central heating. With regard to the comparable at 19 Balteagh Road Armagh he confirmed that it was on a lane and was assumed to have central heating. It also had old agricultural outbuildings. He sought to distinguish it from the Subject Property because it was located on a lane but he did not know the length of the lane.
- 6.4 With regard to the property at 28 Mullan Road which had been suggested on behalf of the Appellant as a suitable comparable, Mr Uprichard stated that he did not consider it to be a suitable comparable. He told the Tribunal that it had a GEA of 134 m<sup>2</sup> and was therefore significantly smaller than the Subject Property. He also informed the Tribunal that the Capital Value Assessment of that property at £78,000.00 as shown in the Capital Value List was net of Agricultural Allowance in that case and that the gross Capital Value figure would therefore be £97,500.00.
- 6.5 The Tribunal sought clarification with regard to the GEA of the Subject Property which had been stated in the letter from Valuation and Lands Agency dated 22<sup>nd</sup> November 2006 to be 176 m<sup>2</sup>. Mr Uprichard confirmed that he had personally surveyed the Subject Property and confirmed the GEA at 184 m<sup>2</sup>.
- 6.6 In response to questions from the Tribunal, Mr McGrady confirmed that a reduction of £5,000.00 is normally applied to a Capital Value Assessment to reflect the fact that a property in question does not have the benefit of central heating. He therefore confirmed that this reduction would have been applied to the comparables at 10 Foyarr Road Armagh and 90 Clay Road Killylea in arriving at their Capital Value Assessments of £125,000.00.
- 6.7 It was submitted on behalf of the Respondent that the letter of 12<sup>th</sup> June 2012 from Karl McElroy should be disregarded as the letter purported to provide Valuations of the property as at 12<sup>th</sup> June 2012 rather than as at the AVD of 1<sup>st</sup> January 2005.

## **7. The Tribunal's Decision**

- 7.1 The Tribunal thanked the parties for their reasoned submissions and their courteous appearances before the Tribunal.
- 7.2 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 has been assessed at the AVD at a figure of £125,000.00. 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.
- 7.3 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 Appellant 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.
- 7.4 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.
- 7.5 The Tribunal must then consider whether the evidence placed before it or the arguments made by the Appellant are sufficient to displace the statutory presumption. Those arguments have been summarised above. Essentially the Appellant’s main argument focused upon the poor condition of the Subject Property. The Respondent countered that argument by pointing to the statutory assumptions set out in Schedule 12 to the 1977 Order, and in particular paragraph 12, requiring an assumption to be made that the property was in an average state of internal repair and fit out having regard to the age and character of the hereditament and its locality. The Tribunal agrees and acknowledges its obligation to follow that statutory assumption and in arriving at its decision has accordingly made that assumption, despite the acknowledged actual poor state of repair of the Subject Property.
- 7.6 Schedule 12 of the 1977 Order also 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 1<sup>st</sup> January 2005) regard must be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances. The Tribunal has therefore considered the comparable hereditaments put forward by the Respondent and the Appellant respectively and referred to herein. None of the Capital Values of the comparables put forward in evidence have been challenged.

- 7.7.1 The comparable at 19 Balteagh Road Armagh is, like the Subject Property, a pre-1919 detached farmhouse. At 188 m<sup>2</sup> its GEA is only 4 m<sup>2</sup> larger than the Subject Property. It also has a substantial farm outbuilding measuring 406 m<sup>2</sup>. It is located on a lane and has no central heating. It has a Capital Value of £120,000.00.
- 7.2.2 The comparable at 10 Foyarr Road, Armagh is also a pre-1919 detached farmhouse again with a GEA of 188 m<sup>2</sup>. It is not accessed via a lane and has central heating. It has a Capital Value of £125,000.00.
- 7.2.3 The comparable at 90 Clay Road Killylea is also a pre-1919 detached farmhouse. At 179 m<sup>2</sup> it is slightly smaller than the Subject Property. Again it is not accessed via a lane and has central heating. Its Capital Value is £125,000.00.
- 7.2.4 The comparable at 28 Mullan Road, Tynan was put forward as a comparable by the Appellant. It is significantly smaller than the Subject Property at 134 m<sup>2</sup> and has central heating. Its gross Capital Value (before the application of Agricultural allowance) is £97,500.00.
- 7.3 Due to the disparity in size with the Subject Property, the Tribunal does not regard the comparable at 28 Mullan Road as a useful comparable in assessing the Capital Value of the Subject Property. However, the Tribunal does consider that the other three comparables at 19 Balteagh Road, Armagh, 10 Foyarr Road, Armagh and 90 Clay Road, Killylea, due to their similar size and description in comparison to the Subject Property, are useful comparables. Having considered those comparables and in particular the presence or otherwise of central heating and whether or not they are located on a main road or are accessed via a rural lane, the Tribunal is satisfied on the balance of probabilities that the appropriate Capital Value Assessment of the Subject Property at the AVD of 1<sup>st</sup> January 2005 is £115,000.00.
- 7.9 Accordingly, the unanimous decision of the Tribunal is that the Appeal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 3<sup>rd</sup> May 2012 is allowed and that the Capital Value of the Property at 26 Mullan Road, Tynan, Armagh BT60 4TB be assessed at £115,000.00 and the Tribunal directs that the Valuation List be altered accordingly.

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

**23<sup>rd</sup> April 2013**