NORTHERN IRELAND VALUATION TRIBUNAL

THE RATES (NORTHERN IRELAND) ORDER 1997

Case Reference Number NIVT 10/19

Between:

CEIRE BROWN - APPELLANT

-and-

THE COMMISSIONER OF VALUATIONS FOR NORTHERN IRELAND - RESPONDENT

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NI Valuation Chairman: Mr Keith Gibson B.L.

Members: Mr Brian Reid FRICS and Ms Noreen Wright

Date of hearing: 17 May 2021

DECISION

Introduction

1. This is an appeal by Ms Brown as Appellant in respect of the assessment of the capital value of her property situate at 104 Glenavy Road, Lisburn, BT28 3XD. The appeal is made pursuant to the relevant provisions as set out in the Rates (Northern Ireland) Order 1977, as amended.

2. For the purposes of this appeal the relevant capital valuation date is the 1st January 2005 (see Schedule 12, paragraph 7(4) of the Rates Order). The other point in time which is often referenced in the context of these appeals is the 1st April 2007 which is the date upon which the valuation lists for domestic properties became operative. What this means, in practice, is that for the purposes of any appeal the Tribunal can only consider whether or not the capital valuation was correct as of the 1st January 2005.

3. Self-evidently, this can cause a number of problems both for homeowners and valuers alike. The most obvious practical difficulty is in respect of properties which are built or constructed or substantially renovated post the 1st January 2005 valuation date. In those instances the valuer, using his or her skill and expertise, must try and assess the value of the new property with reference to similar properties already built and valued earlier (those similar properties are often referred to in valuation term as "the comparables").

4. For homeowners, they face two significant problems in advancing their appeals; one is an evidential problem; the other, a legal one (what is known as the 'tone of the list' statutory presumption). In respect of the evidential problem, homeowners have to

seek to establish to the satisfaction of the Tribunal (and the onus and burden is on them as Appellants) that other properties sold or agreed for sale at the relevant time (the 1st January 2005) demonstrate that their 1st January 2005 valuation was wrong. Gathering that evidence is often very difficult, even for professional valuers.

5. The second difficulty faced by Appellants is that contained at paragraph 7 of Schedule 12 to the Rates Order which states, in a fine example of legalese;

> *"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 hereditaments whose capital value has been revised."*

6. This is what valuers know as the "*tone of the list"* or the "*tone of the comparables*". What this means in practice is that if within a relatively short period of time in a particular area (which in an urban setting, might well stretch only to one street, but in a rural setting may stretch to many miles) there are no or limited challenges to a number of valuations or, if challenges are abandoned or ultimately unsuccessful, then a point can be reached within a relatively short space of time although it would have to be said that a reliable tone of the list for the hereditaments (basically the buildings) in a location or category has been settled - see **A-Wear Limited –v- Commissioner of Valuation VR/3/2001**.

7. Whilst the presumption, as it pertains to the tone of the list, is not to be followed slavishly, if it can be established to the Tribunal's satisfaction that the tone has settled and has been settled for a considerable period of time (measured in years not months) then the prospects of displacing the presumption are significantly diminished.

The Appellant's Appeal

8. The starting point in valuing any property for the purposes of the Rates Order is a number of assumptions which the Valuer and indeed all parties to the appeal must make in respect of the subject property. They are contained in Schedule 12, paragraphs 9 – 15 of the Rates (Northern Ireland) Order 1977 and may be summarised as follows:

    (i) That the property, if sold, was to be sold with vacant possession (i.e. no sitting tenants or difficulty in obtaining possession).
    (ii) That title to the property is by way of Fee Simple or by way of long Lease (i.e. that the value to the property is not diminished by the fact that the title is in some way defective).
    (iii) That the property is sold free from any rent charge or other encumbrance (again that the title is not diminished in value by some sort of obligation on the owner).
    (iv) That the property is in an average state of internal repair and fit-out, having regard to the age and character of the property and its location (this is more nuanced qualification – if a property has a serious defect, which is something distinct from similar properties of similar age and character then the assumption can be displaced).
    (v) That the property is in the same circumstances it would have been expected to have been in on the relevant date, defined as the 1st April 2007 (i.e. that there has been no material change in the property from the 1st January 2005 to the 1st April 2007).

(vi) That Development value is not to be taken into account (i.e. planning hope is to be ignored).
(vii) That the property is 'legal' i.e. not in breach of any planning or building control requirements.

9. On the 26th June 2019, Land & Property Services issued a Valuation Certificate to the Appellant in which her property was assessed as having a capital value of £350,000. The Appellant previously had been notified on the 16th May 2019 of this capital valuation and had appealed same to the Commissioner of Valuation. That appeal had been rejected and the aforementioned Certificate of Valuation was issued. On the 10th July 2019, the Appellant appealed to this Tribunal. The initial grounds of the Appellant's appeal may be summarised as follows;

(i) A neighbouring property of some 254m^2 had a capital value of £140,000.
(ii) Another property at Whinney Hill of some 277m^2 had a capital value of £300,000.

10. Whilst there was obviously some detail lacking in the Appellant's appeal, the thrust of the appeal was clear, namely that proper assessment of relevant comparables had not been made by the Respondent. The Respondent, in a very helpful reply, identified the properties which the Appellant had put forward. The first, with the aforementioned value of £140,000, was a property situate at 102 Glenavy Road, a pre-1919 detached manse. Built in 1910 and with a gross external area of 254m^2, it was in an entirely different condition from the subject property because of its age. It also benefitted from a 50% partial exemption pursuant to Article 41(8) of the Rates (Northern Ireland) Order 1977 on the basis that it was occupied by a full time clergyman or minister. The proper capital value of that property was therefore £280,000. It was not therefore as useful to the Appellant as she first thought.

11. The second property which the Appellant identified was 3B Whinney Hill which was calculated as having a gross external area of 277m^2 and a separate detached garage. It had a capital value of £300,000.

12. The Appellant, in her appeal, submitted that the 3B Whinney Hill property was larger than her subject property whereas in its response the Respondent identified the property at 3B Whinney Hill as being 75m^2 smaller than the subject property. It was this difference in size which effectively formed the battleground in the appeal.

13. The Respondent assessed the gross external area of the subject property as being 352.6m^2 (there was a small quibble over whether this was precisely the correct measurement but nothing material turns on the point) primarily because the surveyor from Land & Property Services considered the "garage" to be habitable space (the term 'garage' was used throughout the hearing without prejudice as to whether it was or was not a garage). Whether or not the garage could be considered as habitable space did, it is fair to say, occupy most of the Tribunal's time at hearing.

14. The hearing, which took place on the 17th May 2021 by way of remote hearing, first heard oral evidence from Mr McGennity on behalf of LPS.

The Respondent's case

15. Using his submissions to the Tribunal as a starting point, Mr. McGennity identified the following comparables, namely:

(i) 13A Kilcorig Road, Lisburn with a habitable space of 359.9m^2 and a garage of 52.5m^2, having a capital value of £360,000.
(ii) 7A School Lane, Ballinderry Upper, with a habitable space of 321m^2, outbuildings of 154m^2 and a capital value of £340,000.
(iii) 10C Ballyclough Road with a habitable space of 324m^2 and a garage of 53m^2 and a capital value of £345,000.
(iv) 45 Glenavy Road, Ballycarrickmaddy, with a habitable space of 489m^2 and a garage of 83.6m^2 and a capital value of £430,000.

16. All of the above properties were constructed post-1990 and were of a similar size (subject obviously to the inclusion of the disputed garage in that assessment). The closest comparable was number 13a Kilcorig Road and the subject property neatly dovetailed between it and the value of 7A School Lane. On the face of it, therefore, the tone of the list did not appear to be in dispute. The salient issue was, however, the size of the subject property.

17. Mr McGennity, in his well-marshalled evidence, drew the Tribunal's attention to the provisions of Schedule 5 of the Rates (NI) Order 1977, which provides for the definition of a dwelling house and specifically the definition of a private garage. That definition is replicated below in its entirety;

6. —(1) In this Order "private garage" means, subject to sub-paragraph (2), a hereditament which is used wholly or mainly for the accommodation of a motor vehicle.

(2) For the purposes of sub-paragraph (1) a hereditament which is used—

(a) for the purposes of a trade or business; or

(b) by a charity, a public body or any other body that is not established or conducted for profit,

is not a private garage.

18. The Respondent's position was that the area was not a garage by virtue of;

(a) its physical state (it was recently constructed to a high standard);
(b) the existence of a patio door;
(c) the space inside; and
(d) the fact that the garage space interconnected with the dwelling house.

19. The total area of the disputed garage or block was measured by the Respondent at some 67m^2. Once the 67m^2 is removed, this leaves a GEA of 287.8m^2 which, incidentally, matched almost exactly the size of one of the Appellant's comparables, namely 3B Whinney Hill valued at some £300,000. Connected to the garage was a smaller block of some 14m^2 (the interconnecting space referred to at 18(d) above).

The Appellant's Case

20. In response to the submissions by the Respondent, the Appellant relied on her own written submissions and subsequent oral evidence. The Appellant's submissions focused on the alleged habitable space and, in favour of her submission that both block 2 (the interconnecting hallway) and block 3 (the garage) should be considered as non-habitable spaces, she relied on the following, namely:

(i) That the garage contained in block 3 had only ever operated as a garage and storage area.

(ii) That although there was no garage door and instead there was a sliding door, the sliding door still provided function and access for vehicle and gardening equipment.

(iii) That although the walls were plastered internally within the disputed space, this was consistent with a garage.

(iv) There were no finished floors, skirting boards, architraves or under floor heating within the garage.

(v) The choice of a sliding door rather than a garage door was made consciously to provide a type of disabled access based on the needs of the various family members who would attend the property.

(vi) That the fact that the property was linked to the garage should not be a factor in considering whether or not the space was habitable space. In support of this, the Appellant produced a large number of photographs showing garages seemingly connected to the main dwelling house.

21. Support for the Appellant's case was further found in correspondence from Mr Seamus Carolan, an Architectural and Project Management Consultant, who outlined that the garage was not designed as habitable accommodation nor was it approved as such by the Planning Service or Council Building Control as such. The importance of these two factors, namely that a) the Appellant had not applied for Planning Permission to use the area as anything other than a garage; and b) that Building Control had inspected the plans and inspected the property, all in the context where it was to be used as a garage are important factors. Copies of the Planning Permission and Completion Certificates were attached to Mr Carolan's correspondence.

22. The Appellant's case was, however, complicated somewhat by a decision taken by the Appellant unilaterally to remove access from the garage to the main dwelling after her appeal was lodged and in the middle of the appeal process. This occurred in or around the 23rd July 2020. In reply to the Tribunal being notified the Respondent made clear that any alterations to the property would have to be supported by an application to the District Valuer for the value to be amended. This is entirely correct; the decision to remove access has no role to play in this appeal. This appeal is from the decision of the Commissioner of Valuation to uphold Land & Property Services' valuation of £350,000 as of the 26th June 2019. Any changes made to the property thereafter may well be subject to a separate assessment but it does not form any part of the present appeal. Furthermore and in any event it would have had no bearing on the issues anyway – whether or not block 3 was connected or not was irrelevant, lots of garages are connected to or contained within residential properties.

23. At the hearing Mr Carolan gave evidence as did the Appellant, Ms Brown and, in support of her case, submissions were made by her partner, Mr Close. Mr Close had prepared an extremely detailed and comprehensive submission paper to the Tribunal dated the 22nd December 2020. All of those submissions were considered by the Tribunal even if they are not referred to expressly herein.

The Tribunal's Decision

24. Article 4 of the 1977 Order prescribes that Schedule 5 shall have the effect for the purposes of determining whether a hereditament (the fancy legal term for 'a property') is to be treated as a dwelling house for the purposes of the Order and for

determining which hereditaments are to be treated for the purposes of a private dwelling and for the purposes of a private garage and private storage premises.

25. The reason the distinction between a dwelling house, private garage and private storage premises is important is that, pursuant to Article 39(1) of the 1977 Order, any hereditament will be valued on that basis. Quite obviously, any portion of a property which has a dwelling house will be valued differently from a private garage or private storage premises. The submission made by the Appellant was that the area was either for use as a private garage or private storage area. As set out above pursuant to Schedule 5, paragraph 6, a private garage is a building which is used wholly or mainly for the accommodation of a motor vehicle and, pursuant to Schedule 5, paragraph 7, private storage premises constitutes a building which is used wholly in connection for the storage of domestic articles belonging to the residents. Domestic articles are then further defined as either household stores or light vehicles.

26. The evidence given by the Appellant was that the property was used for the storage of both vehicles and of lawnmowers and other ancillary household goods including logs. The Tribunal accepts the Appellant's evidence that this was the use to which the property had been historically put and for which it was currently being utilised.

27. In order to interpret properly, however, the statutory provisions, one then has to look at how a dwelling house is defined. Within Schedule 5, paragraphs 2 - 5, a dwelling house is defined by the legislator in the first instance by the things it is not, namely a dwelling house is not a property used for business or self-catering accommodation or used by the Secretary of State for armed forces accommodation. In truth, the defining criteria within Schedule 5 give little away and one then has to look as to how the matter has been dealt with in previous decisions of the Tribunal. A number of cases were highlighted including **Samuel Thomas Bradley –v- Commissioner of Valuation** [32/17].

28. There, the law is very clearly and helpfully set out by the Tribunal Chair Mr. Wright but the facts of that case were very different. In **Bradley**, there was a space which was incorporated into the dwelling and which had previously been used as a garage. The Appellant had, however, changed the space from a garage into a living space and then seemingly on whim it was being used as a garage to store motorcycles. The history was that the garage had been converted in 2000 to a living space with extensive work being carried out including installation of radiators and timber panelling. All that had happened to change matters however, was that the Appellant, Mr Bradley, had started storing his motorcycles in it.

29. That must be contrasted very differently, however, with the present case. Here, the area, at no stage to the Tribunal's satisfaction, has been utilised as a living space. It neither has Planning Permission for use as a living space nor has it been approved by Building Control for use as a living space. To use it as a living space would therefore constitute, in the premises, a breach of the Planning Regulations and Building Control.

30. One of the statutory assumptions which the Tribunal is required to give effect to is that there has been no relevant contravention of any statutory provision or any requirements or obligation arising under a statutory provision and agreement otherwise – see the basis of valuation assumptions contained in Schedule 12 of the Order and more especially paragraph 15 of Schedule 12. Whilst the assumption can, of course, be rebutted, that is the starting point. Here, the Tribunal is not convinced

that the assumption should be displaced having heard and considered all of the evidence.

The Effect of the Decision

31. The Tribunal is satisfied that the area contained within the garage/block 3 should be classed as a private storage area. The interconnecting corridor at 18(d) is part of the house to be used to connect it to the garage and so it must be classed as a dwelling house, not as a garage or storage space.

32. In light of the Tribunal's decision it is further the order of the Tribunal that the matter should be remitted back to LPS for further consideration and a revised valuation to take into account the Tribunal's finding on the garage, which is not part of the dwelling house. For the avoidance of doubt, said power is exercised pursuant to Article 22 of the Interpretation Act (NI) 1954.

Signed: Mr Keith Gibson, Chairman
Northern Ireland Valuation Tribunal
Date decision recorded in register and issued to parties: 21 September 2021