

**NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1997**

Case Reference: NIVT 10/19

Between:

CEIRE BROWN

Appellant:

-and-

THE COMMISSIONER OF VALUATIONS FOR NORTHERN IRELAND

Respondent:

NI Valuation Chairman: Mr Keith Gibson B.L.

Members: Mr Brian Reid FRCS and Ms Noreen Wright

Date of Hearing 17th May 2021

Date of Decision 1st September 2021

REVIEW HEARING

Dated this 22nd Day of August 2022

1. On the 21st September 2021, this Tribunal delivered a decision in respect of property situate at 104 Glenavy Road, Lisburn. The decision of the Tribunal was that part of the private residential premises was not rateable being, as it was, a private storage area, i.e. a non-habitable space. The Appellant therefore allowed the Appellant's appeal. In light of the Tribunal's decision, it remitted the assessment of the property back to LPS for further consideration.
2. Arising out of said decision, a review was requested by the Respondent by way of notice ('the Review Notice'). The ability to do so is provided in the Valuation Tribunal Rules (Northern Ireland) 2007 ("the Rules"), as amended; Rule 21 provides;

Review

21. —(1) If, on the application of a party or on 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 a 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 known or foreseen before then; or

(d) otherwise the interests of justice require, the Valuation Tribunal may review the relevant decision.

3. The power or ability to request a review is different in its nature from any further appeal proper to the Lands Tribunal, pursuant to Article 54(a) of the Rates (NI) Order 1977, as amended.
4. The review request from the Respondent did not particularize which of the limbs under Rule 21(1)(a)-(d) it was applying for a review under. This should have been done and the failure to do so by the Respondent is disappointing. The Tribunal is left therefore trying to identify which of the limbs the Respondent might be relying upon.
5. An oral hearing was convened on the 22nd August 2022 and the Tribunal heard from the Appellant herself in reply to the Respondent's request. The Respondent was represented by Mr. Gerard McGerrity and Stephen Jeffrey.
6. The written grounds sought by the Respondent for a review were;

Ground 1 - That LPS has been asked to determine an amended valuation and question whether this is an acceptable outcome from the viewpoint of the Appellant. The expectation of the Panel is that an independent decision would issue with a clearly outlined rationale. LPS remained of the opinion that the current valuation has been assessed correctly with no clear justification to suggest otherwise. LPS also questioned what redress the Appellant would have if they were dissatisfied with the revised valuation.

Ground 2 - The Panel's interpretation of Schedule 12, paragraph 15 in this decision is incorrect. According to the Review Notice, this provision requires that the Planning Permission or lack of Planning Permission is disregarded for the purposes of assessing capital value. According to the Appeal Notice, the allegation is that this decision places a significant emphasis on the fact that the area in question has Planning Permission for use as a garage. The Respondent's position is that it displays no obvious characteristics of a garage and the decision references the actual use of the area rather than what it is capable of being use. This ground was expanded upon at the oral hearing to make the case that there was no valuation guidance for assessing a "*domestic store*" or what the LPS also referred to as "*ancillary space*".

7. At this point it is worth indicating that the review procedure is not intended to supplant or replace the appeal procedure to the Lands Tribunal. A review is not intended to be a second bite at the cherry, for a party who feels he has not submitted his best case to the Tribunal, to have another go.
8. It is worthwhile setting out the Tribunal's view of the ambit of each of the relevant review grounds under Rule 21 (rule 21 (b) and (c) are quite obviously of no relevance here);

Rule 21 (1)(a)

9. The review procedure under this head is designed to correct obvious and fundamental flaws which arose because of human error, errors which when pointed out, are self-evident, patent and objectively, clearly erroneous. It is impossible to conjure up an exhaustive list of the type and nature of errors which may be relevant, but if a Statement of Case failed to be included or dealt with at an appeal or if the body of one decision somehow became attached to the title of a different decision, these are the types of error which would entitle any party, or the NIVT of its own initiative, to allow a review.

Rule 21(1)(d)

10. Whilst the discretion of the Tribunal to order a review in the interests of justice is wide, it cannot be boundless and must take into account a number of factors, which include not only the interests of the Appellant, but also the interests of the Respondent.
11. Dealing with each of the Grounds sought for a review seriatim;

Ground 1

12. In respect of first ground, i.e. that the Tribunal erred in ordering that the matter be remitted for further consideration, the impact of that decision is, it is respectfully submitted, clear. The decision of the Tribunal was that the LPS have mistakenly included a non-habitable space in their assessment. The Appellant therefore deserves to have the capital value of her property assessed properly.
13. Thereafter and if LPS erred a second time around, her ability to appeal would be preserved.
14. That being said however at the Review hearing the Appellant indicted that she would be content if the Tribunal exercised its discretion and decided the Capital Value without further reference to LPS. The Tribunal is of course able to do so, and in determining the Capital Value the Tribunal refers back to paragraphs 9-13 of its original decision which identified certain comparables. The obvious comparable to which the Tribunal is most attracted is 3B Whinney Hill, and as the Tribunal identified at para 19 of its original decision 3B Whinney Hill had (once the offending garage space was removed from the Appellant's property) an almost identical size of 277m² (the Appellant's property without the garage was approx. 287.8m²).
15. The Assessed Capital Value of 3B Whinney Hill is £300,000 and the Tribunal sees no reason why the Capital Value of the assessed property should not match that value.

Ground 2

16. Schedule 12, paragraph 15 prescribes as follows [it is necessary to replicate Schedule 12 para 7 in order to understand the context of para. 15]:

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.

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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.

17. The notion that there has not been any clear justification from the Tribunal as to why the assessment was made in the way it was is manifestly incorrect. The detailed decision of the Tribunal contained at paragraphs 24 to 30 was that, on the basis of the evidence laid before the Tribunal, the Tribunal was satisfied that the subject area of the property was not being used for habitation with reference to Article 39(1) of the Rates (Northern Ireland) Order, as amended. There is no discretion of the Tribunal or indeed of LPS to assess the space as falling within some other category – either the space is habitable space or it is not. In the Tribunal's view this space was clearly not.
18. Having revisited the decision, the Tribunal is satisfied that its reasons are set out clearly. The Respondent may not agree with those findings and the conclusion reached by the Tribunal but a review cannot succeed under this head, certainly in the absence of any specific detail as to where the Tribunal alleged erred.
19. This ground is, in effect, a resubmission of the submissions made by the Respondent at the appeal hearing. The Tribunal has already considered those submissions in its decision at paragraphs 15 – 19 and there is nothing new in this ground which is sufficient to allow for a review.

Decision:

20. The decision of the Tribunal is, therefore, that the Respondent's request for a review is allowed in part, insofar as the Tribunal has decided not to remit the matter back to LPS for further consideration but has substituted its' own assessment of the Capital Value at £300,000.
21. Otherwise nothing contained in the Respondent's request for a review has caused or occasioned the Tribunal to change, vary or alter its original decision.

Signed: Mr. Keith Gibson (Chairperson)

Northern Ireland Valuation Tribunal

Date decision issued to the parties: 15/11/2022