

**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: 21/18**

**ART CONNOLLY – APPELLANT**

**AND**

**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr Charles O’Neill**

**Members: Mr H McCormick FRICS and Ms Angela Matthews**

**Date of hearing: 3 September, Belfast**

**DECISION**

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland is not upheld and the appellant’s appeal is allowed.

**REASONS**

**Introduction**

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (“the 1977 Order”). Neither party appeared before the tribunal and the appeal was decided on the basis of written submissions only.
2. The appellant by Notice of Appeal, appealed against the decision of the Commissioner issued on 5 September 2018.
3. This appeal is in respect of the valuation of a hereditament situated at 3B Shelton Road, Armoy, County Antrim, BT53 8YQ (“the subject property”).

## The Law

4. The statutory provisions are to be found in the 1977 Order as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in this matter.
5. Article 39 of the 1977 Order (as amended by the 2006 Order) states that any dwelling-house, private garage and any private storage property shall be valued on an estimate of their capital value.
6. Paragraph 7 in Part 1 of Schedule 12 to the 1977 Order (as amended) states that “... for the purposes of this [the 1977] Order the capital value of a hereditament shall be the amount, which on the assumptions mentioned in paragraph 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.”
7. Paragraph 7 further states 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”.
8. The assumptions mentioned in paragraphs 9 to 15 which are relevant to this case are as follows:
  - “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 sub-paragraph 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 Evidence**

9. The matter was decided on the basis of written submissions by the parties.

10. The tribunal had before it the following documents:

- (a) The Commissioners Decision issued on 5 September 2018;
- (b) The appellant’s Notice of Appeal dated 1 October 2018;
- (c) Report by Amy Holmes Bsc (Hons) MRICS on behalf of the appellant dated 28 September 2018;
- (d) A document entitled ‘Presentation of Evidence’ dated 7 January 2019, prepared on behalf of the respondent Commissioner by Seline McClelland BSc (Hons) MRICS and submitted to the tribunal for the purposes of the hearing;
- (e) Letter from the appellant to the tribunal dated 5 February 2019;
- (f) Email from the respondent dated 26 April 2019.

## **The Facts**

- (1) The subject property is a privately built detached chalet (1.5 storeys) which was built in 2011 and extended in 2016. It has a gross external area (GEA) of 266m<sup>2</sup> and a detached garage of 66m<sup>2</sup>. The property has double glazing in PVC frames.
- (2) The subject property had originally been included in the valuation list. The appellant submitted an application to the District Valuer advising that the subject property was being renovated which required the property to be vacated for three months. The property was renovated and the property was assessed with a capital valuation of £260,000. The survey was queried by the appellant and the capital valuation was adjusted to £230,000 by a certificate of valuation issued on 24 July 2018.
- (3) An appeal was lodged to the Commissioner of Valuation and the capital valuation was revised to £225,000 from £230,000. The certificate of valuation was issued on 5 September 2018. The appellant appealed the decision to this tribunal.

## **The Appellant's Submissions**

11. The appellant in his evidence makes submissions broadly in relation to two issues
  - (a) The capital valuation of the subject property;
  - (b) Whether an allowance should be given in the capital valuation of the property for the nuisance the appellant states is endured at the subject property.

Each of these issues will be considered in turn.

### *The capital valuation issue*

12. The appellant stated that the subject property had originally been valued at £170,000. He then had a loft conversion and a wet room built on at the gable end

of the property. This raised the capital value to £225,000. He considered that this is an increase in the capital valuation of 32% which he believes is too high.

13. The appellant refers to a report conducted by Amy Holmes MRICS of Philip Tweedie and Company dated 28 September 2018. In this report she refers to the comparable evidence forwarded by the respondent and also to other comparable evidence. These are as follows:

- (a) 1C Shelton Road, Armoy which has an area of 289.5m<sup>2</sup>. This property has a capital valuation of £180,000 which equates to a capital value per m<sup>2</sup> of £621.76.
- (b) 19 Glenbush Road, Armoy which has an area of 290m<sup>2</sup>. This property has a capital valuation of £220,000 which equates to a capital value per m<sup>2</sup> of £758.62.
- (c) 1B Shelton Road, Armoy, which has an area of 218m<sup>2</sup>. This property has a capital valuation of £170,000 which equates to a capital value per m<sup>2</sup> of £779.82.
- (d) 37 Altnahinch Road, Armoy which has an area of 250m<sup>2</sup>. This property has a capital valuation of £210,000 which equates to a capital value per m<sup>2</sup> of £840.
- (e) 49 Shelton Road, Armoy which has an area of 253m<sup>2</sup>. This property has a capital valuation of £235,000 which equates to a capital value per m<sup>2</sup> of £928.85.

14. In respect of these comparables the appellant submitted as follows:

- (a) 1C Shelton Road, Armoy is a detached dormer bungalow, located on the same road as the subject property but superior in terms of size. It has a detached garage.
- (b) 19 Glenbush Road, Armoy is a detached dormer bungalow located in close proximity to the subject property but is superior in terms of size. It has a detached garage.

- (c) 1B Shelton Road, Armoy, is a detached dormer bungalow, located on the same road as the subject property but is inferior in terms of size. It does not have a garage.
- (d) 37 Altnahinch Road, Armoy is a two storey detached house located in close proximity to the subject property. This property has a large detached garage and is set on a private site. It would be considered superior to the subject property.
- (e) 49 Shelton Road, Armoy which is a large modern two storey detached house located on the same road as the subject property. It is similar in terms of size but benefits from a large detached two storey garage with separate access and outbuildings. It is a superior house and located on a private site. Its value appears high.

15. In her report Ms Holmes concludes that on the basis of the comparable evidence she believes the market value of the subject property at the date of valuation is approximately £215,000 (£808 per m<sup>2</sup>).

16. The appellant also separately referred to three other properties;

- (a) 37 Altnahinch Road, Armoy which has an area of 249.69m<sup>2</sup>. This property has a capital valuation of £210,000.
- (b) 32 Glenbush Road, Armoy which has an area of 238.6m<sup>2</sup>. This property has a capital valuation of £190,000.
- (c) 4 Glenbush Road, Armoy which has an area of 239m<sup>2</sup>. This property has a capital valuation of £180,000.

17. The appellant also referred to the fact that all the comparisons being used by the respondent were new builds which have never been sold and that perhaps the valuations have been working from a high baseline.

#### *The nuisance issue*

18. The appellant states in his notice of appeal that the subject property is beside a farmyard and a bird house. Ms Holmes expands on this, indicating that there is a

detering factor due to issues such as noise pollution, air pollution and increased congestion with lorries and other farm machinery at the subject property.

19. The appellant in his evidence goes into more detail surrounding the workings of the neighbouring farm and bird house.

20. The factors which cause a nuisance are stated to be as follows:

- (a) *Noise pollution* – the bird house alarm could go off at any time during day or night; lorries coming early in the morning to fill gas, meal or deliver bedding; with forklifts to remove birds from the bird house; tractors and quads and cars all entering and leaving the farm at all times of the day and evening and night
- (b) *Air pollution* – when meal is delivered, the dust blows onto the subject property sticking to windows and cars and is deposited onto the yard of the subject property; when the bird house is being emptied the dust, feathers and dirt particles from the bird house can carry over to the property
- (c) *Odour pollution* – when the bird house is being emptied the windows of the subject property cannot be opened due to the smell.
- (d) *Litter pollution* – rubbish from the farm can sometimes get stuck in the trees on the subject property.

The appellant has provided photographic evidence of this pollution in his evidence to the tribunal.

21. Ms Holmes in her report on behalf of the appellant states that the unadjusted capital valuation of the subject property should be £215,000. She further submits that an additional allowance of 10% should be applied to this figure to reflect the close proximity of the poultry farm and the impact it could have on the open market value of the subject property.

## The Respondent's Submissions

### *The capital valuation issue*

22. The Commissioner's Presentation of Evidence to the tribunal is that in deciding the capital value of the property regard was had to capital values in the valuation list of comparable hereditaments in the same state and circumstances. Details of these comparable properties were set out in a schedule to the Presentation of Evidence with further particulars of same, including photographs of the comparable properties. Four comparables were referred to in total. These were capital value assessments, the details of which are as follows:

- (a) The first comparable referred to was 1C Shelton Road, Armoy, County Antrim, which has a gross external area of 289.5m<sup>2</sup>. It was stated in the Presentation of Evidence that it does not have a garage. This is a post 1990 detached chalet with 1.5 storeys. The assessed Capital Value is £225,000 (unadjusted) and the capital value is £180,000 due to agricultural relief. The respondent states that this property is comparable to the subject property in that it is in the same rural location, similar house type, similar size and age to the subject property.
- (b) The second comparable referred to was 49 Shelton Road, Loughguile, Armoy, County Antrim, which has a gross external area of 253m<sup>2</sup> and a garage of 67.2m<sup>2</sup>. It also has an outbuilding (stable) of 46m<sup>2</sup>. This is a post 1990 detached chalet (1.5 storeys). The assessed Capital Value is £235,000. The respondent states that this is slightly smaller than the subject, has a stable which is valued at £8,500 and allowing for this the capital valuation would be £226,500. By applying this directly to the subject's larger floor area, this comparison would support a higher valuation for the subject property. The respondent indicates that less weight is given to this comparison given it is 2.8 miles from the subject.
- (c) The third comparable referred to was 36 Shelton Road Armoy, County Antrim, which has a gross external area of 273m<sup>2</sup>. This is a post 1990 detached house (1.5 storeys). The assessed Capital Value is £215,000. This is an adjusted capital value due to 10% allowance for shared



laneway and proximity to farm buildings. The unadjusted capital valuation was stated to be £240,000. This is located 1.2 miles from the subject and given the subject's smaller floor area, it would support a higher valuation for the subject property.

- (d) The fourth comparable referred to was 1B Shelton Road, Armoy, County Antrim, which has a gross external area of 217.9m<sup>2</sup>. This is a post 1990 detached chalet (1.5 storeys). The assessed Capital Value is £170,000. This is an adjusted value with an allowance of 8% for a long poor laneway. The unadjusted capital value was stated to be £185,000. This is in close proximity to the subject property. This property is considered comparable when reflecting the subject's larger size and garage.

23. In relation to the additional comparables submitted by the appellant, the respondent made the following submissions:

- (a) 19 Glenbush Road, Armoy is a detached dormer bungalow with a GEA of 290m<sup>2</sup> and a garage of 35m<sup>2</sup>. It has a capital valuation of £220,000. It is larger than the subject with a smaller garage. It is not included in the respondent's evidence as it was considered that there were sufficient comparisons on the Shelton Road, Armoy.
- (b) 37 Altnahinch Road, Armoy is a two storey detached house located 2.1 miles from the subject. It has a GEA of 249.69m<sup>2</sup> and a garage of 68.7m<sup>2</sup>. It has a capital valuation of £210,000. The respondent considers that this property is not in the same state and circumstance as the subject as it is a two storey dwelling.
- (c) 32 Glenbush Road, Armoy which has an area of 238.6m<sup>2</sup>. This property has a capital valuation of £190,000. The respondent does not consider this to be in the same state and circumstance as the subject property as it is a two storey dwelling.
- (d) 4 Glenbush Road, Armoy which has an area of 239m<sup>2</sup>. This property has a capital valuation of £180,000. The respondent does not consider this to be in the same state and circumstance as the subject property as it is a two storey dwelling.

### *The nuisance issue*

24. In relation to the issue concerning the nuisance being experienced by the appellant at the subject property, the respondent states in the Presentation of Evidence that the appellant did not advise of the neighbouring farm at inspection or make reference to any nuisance being experienced due to its proximity. The respondent states that no noise or air pollution was evident at inspection nor was there any increased traffic. Furthermore, the subject property has a private laneway from the Shelton Road and a private self-contained site. The subject is in a rural location and therefore agricultural operations with active farmyards are to be expected.
25. The respondent states in the Presentation of Evidence that when comparing the subject to the capital valuation of 36 Shelton Road, the circumstances are different in that the subject does not share access with the neighbouring property/farmyard. Therefore, the allowance of 10% afforded to 36 Shelton Road is not automatically transferrable to the subject.
26. Furthermore, the respondent states that if it is established that the outhouses and the poultry farm were in existence prior to the 2007 domestic revaluation the market evidence gathered to set the capital values already accounts for the rural location, existence of the agricultural operations and any associated nuisances.

### **The Tribunal's Decision**

27. Article 54 of the 1977 Order enables a person who is dissatisfied with the Commissioner's valuation as to capital value to appeal to this tribunal. In this case the capital value has been assessed at a figure of £225,000. On behalf of the Commissioner it has been contended that this figure is fair and reasonable in comparison to other properties.
28. It is appropriate to remember that there is a statutory presumption in Article 54(3) of the 1977 Order in terms that "On an appeal under this Article, any valuation shown in the valuation list with respect to a hereditament shall be deemed to be

correct until the contrary is shown.” It is therefore up to the appellant in any case to challenge and to displace that presumption, or perhaps for the Commissioner’s decision to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.

29. It is convenient to address the tribunal’s decision in two parts, relating to each of the issues referred to by both parties. These are the capital value and the nuisance issue respectively.

*The capital value issue*

30. It is important to state the basis on which valuations have to be assessed in the legislation. This has already been set out in decisions of both this tribunal and indeed the Lands Tribunal. As has been pointed out in a recent decision of the Lands Tribunal in *RZ v Commissioner of Valuation* (VT/2&3/2016 [2017]) the tribunal in deciding cases derives assistance from the following cases

*McKeown Vintners v Commissioner of Valuation* VR/9/1985

“When, however, a revision of an entry in a valuation list is under consideration different principles come into play; in particular paragraph 2(1) and the concept of comparable hereditaments. The reason is simple. The very completion of the list, at general revaluation, by itself creates comparables, and paragraph 2(1) can begin to play its role. That role is this. There can, as the Tribunal has already stated, be no challenge to the principles applied at general revaluation. Any challenge before the Lands Tribunal must be by way of an application for revision of an entry already in the list. As time progresses, if actual rental levels and turnover figures were used for the revision of a particular entry in the valuation list, it would inevitably result in that entry being increased to a level significantly higher than other entries in the list. There must therefore be a limiting factor, and this provided by paragraph 2(1) which, in essence, produces what is often termed a ‘tone of the list’, and which ensures fairness and uniformity. It does this by providing that at revision stage regard ‘shall be had’ to the net annual values in the valuation list of

comparable hereditaments. Its role will be discussed in greater detail later. Suffice to say that the significance of this role increases with the passage of time...”.

In the subject reference for “paragraph 2(1)” read “paragraph 7(2)” for “net annual value” read “capital value” and for “rent/rental levels” read “capital value/capital value levels”.

*A-Wear Limited v Commissioner of Valuation VR/3/2001*

“The early days are important and the Tribunal agrees with Mr Hanna that the practical reality is that, if entries are not challenged, or if challenges are abandoned, the point will have been reached within a relatively short space of time at which it would have to be said that these settlements establish a reliable Tone of the List for the hereditaments in a location or category. At that stage, although still a question of balance, by virtue of paragraph 2 of schedule 12, a district valuer is almost obliged to apply that level. Skilled assessment based on proper research may justify an adjustment or allowance in individual cases, but the Tone of the List provision, although protecting ratepayers from unfairness resulting from inflation, does make anything other than a first phase challenge difficult.”

*Elias Altrincham Properties v Commissioner of Valuation VR/15/2011*

“For the following reasons the Tribunal is not persuaded that Mr Elias has succeeded in displacing the presumption that the valuations shown in the valuation list were correct. Both in law and in practice the time for an effective challenge to the evidential basis, that set the tone of the list at the relevant General Revaluation, is long past. (See *A-Wear Ltd v Commissioner of Valuation* [2003] and *McKeown Vintners Ltd v Commissioner of Valuation* [1991].) Any attempt now to reconsider the principles and basis on which the tone was set would be mainly speculation ... At the time the list came into operation, apart from one exception, the assessments were not challenged...”

31. The appellant, through the report of Ms Holmes, has undertaken a calculation of capital value of a property divided by the size of the property to give an indication of the capital valuation of the subject property per m<sup>2</sup> on an arithmetic basis. This is not the correct basis for assessing the capital valuation. The correct basis is set out in the legislation and case law referred to above.
32. Furthermore, there is reference in the report of Ms Holmes to the preparation of a report on the market value of the property at the date of valuation (1 January 2005) for the purposes of rates negotiations. For the avoidance of any doubt, in this respect the appropriate test is capital value which is defined as “the amount which, on the assumptions mentioned (in the Rates (NI) Order 1977 (as amended)), 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.”
33. In this case the tribunal finds that the unadjusted capital valuation of the subject property is supported by the capital valuation of 1B Shelton Road, Armoy. It is situated in close proximity to the subject property and is a post 1990 chalet (1.5 storeys). It has an unadjusted capital valuation of £185,000. Albeit that it is smaller than the subject and does not have a garage, it is directly comparable to the subject as reflective of the fact that the subject is bigger and has a garage.
34. The unadjusted capital valuation of the subject is also supported by the capital valuation of 49 Shelton Road, Loughguile. This again is a post 1990 detached chalet (1.5 storeys). It is smaller than the subject with a similarly sized garage. allowing for an adjustment for the fact that this property has a stable the capital value would be £226,500. Albeit that it is 2.8 miles from the subject, the tribunal finds that it supports the unadjusted capital valuation of the subject.
35. In relation to the property at 36 Shelton Road, the tribunal gives less weight to this property as it is a detached house and does not have a garage.
36. In relation to the comparables submitted by the appellant, the tribunal finds that 37 Altnahinch Road is a detached house and is smaller than the subject.

37. The tribunal finds that the properties at Glenbush Road, forwarded by the appellant are two storey houses and so the tribunal prefers the other comparables referred to above.

38. The tribunal notes that there is a direct contradiction in the evidence forwarded by the appellant and the respondent in respect of 1C Shelton Road, Armoy. The appellant's evidence, in the report from Ms Holmes, is that this property has a detached garage. However, the respondent in the Presentation of Evidence states that this property does not have a garage. The tribunal has therefore not taken this comparable into account in this matter in these circumstances and has dealt with the matter on the basis of the other comparables submitted by each of the parties.

#### *The nuisance issue*

39. In relation to the issue of nuisance, the appellant, in his evidence before this tribunal has given detailed evidence as to the nature of the nuisance that is experienced at the subject property due to the working farm and in particular the bird house which is close proximity to the subject property. The appellant states that these are factors which are not applicable to other houses in the area as they are not affected in the same way or to the same extent as the subject property.

40. The issues being experienced by the subject property due to the farm and in particular the bird house are as outlined in the appellant's submissions referred to earlier. In the light of these submissions the tribunal finds that there is nuisance of the kind outlined by the appellant and cited above in this decision and that in the circumstances it is appropriate that there should be a reduction in the capital valuation of the subject property to account for this. In the particular circumstances, given the nature and extent of the nuisance a reduction of 10% is appropriate. Therefore, the capital valuation should be reduced from £225,000 to £202,500 and the appellant's appeal succeeds on this point.

41. Therefore, the decision of the tribunal is that the capital valuation of the subject property be adjusted to £202,500.

**Signed: Mr Charles O'Neill - Chairman  
Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to the parties: 9 October 2019**