

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: 67/12

MAURICE CAIRNS - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Tim Hopkins FRICS and Ms Angela Matthews

DECISION ON REVIEW

The unanimous decision of the tribunal is that there are no proper grounds made out by the appellant to enable the tribunal to review the decision of the tribunal promulgated on 13 June 2013 and thus the tribunal's decision is affirmed and the appellant's application for review is dismissed.

REASONS

Introduction

1. This is a review of the tribunal's decision ("the decision") in respect of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The decision was issued to the parties by the Secretary of the Northern Ireland Valuation Tribunal ("the Secretary") on 14 June 2013. The Secretary received on 27 June 2013 a letter dated 25 June 2013 from the appellant ("the review letter") which was taken to constitute a request to the tribunal to review the decision, the word "reconsider" having been used. The appellant had requested this "in the interest of justice". He had raised a number of issues that shall be referred to further below.
2. The review letter was copied to the respondent and the respondent thus was duly notified of the appellant's request for a review and it was indicated that the respondent did not wish to make any submissions.
3. An oral hearing of the review application was arranged and duly proceeded on 27 August 2013. The appellant, Mr Cairns, attended and represented himself; there was no representation by the respondent.

THE APPLICABLE LAW

4. The Valuation Tribunal Rules (Northern Ireland) 2007 ("the Rules"), as amended, provide at Rule 21 as follows in respect of the review of any decision of the tribunal:-

“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.”

THE HEARING AND THE ARGUMENTS

5. The tribunal at the outset of the hearing further clarified with the appellant which of the foregoing statutory grounds might be available to the tribunal to conduct a review of the decision. The tribunal, firstly, explained to the appellant that he would have to initially establish proper grounds upon which the tribunal might proceed to review the decision. If he failed to do that the review could not proceed. Then, after discussion (and following assistance provided to the appellant on the tribunal’s part in identifying appropriate potential statutory grounds), it was considered that the only possible ground identified by the appellant was that contained within Rule 21 (d) of the Rules, the so-called “*interests of justice*” ground. The tribunal then heard argument on the appellant’s part as to why the tribunal should properly review the decision on foot of this ground, in the absence of any argument from the respondent to the contrary.

THE SUBMISSIONS

6. The appellant’s argument in respect of each of the issues raised by him in his said review request letter (as clarified in the course of additional oral submissions made by the appellant to the tribunal) were as follows:

6.1 The appellant had made a statement that appeared to have gone missing as no reference had been made to that statement in the tribunal’s decision;

6.2 Land and Property Services in the Presentation of Evidence had described the subject property as “constructed of brick” but that was incorrect and the property was constructed of concrete blocks with pebble dash render finish and standing on a 3 to 5 tier brick plinth. That was seriously misleading and showed a degree of carelessness on the part of the Land and Property Services valuer;

6.3 Land and Property Services on 17 April 2013 were allowed to submit a late response in response to the appellant’s response of 3 April and did not sign the declaration to that submission of evidence. The tribunal dates were delayed

because of that and (unspecified) telephone calls went unanswered (dates and times were available if required later);

6.4 *The properties chosen by Land and Property Services in no way represented a true comparison to the subject property and the respondent's submission of evidence should not have been allowed.*

6.5 *The tribunal in the decision appeared to criticise Mr McLean's valuation of the subject property at £250,000 but accepted that respondent's original valuation of £400,000 which was ridiculous and unjustifiable in the extreme. Article 54(3) of the Rates (Northern Ireland) Order 1977 has not been properly interpreted by the tribunal but there was favour shown towards the respondent;*

6.6 *In paragraph 6 of the decision there appears a serious anomaly in that out of the four properties chosen by the respondent only one property had chosen to query their valuation. The other three had not queried their valuations and had (possibly) been over-paying their rates;*

6.7 *In paragraph 13 of the decision the tribunal had made reference to the appellant not selecting specific properties to compare against the subject property. Selecting other properties would have been in breach of the human rights of other property owners who had not given their written consent for their properties to be used in that manner;*

6.8 *In paragraph 14 of the decision the appellant would challenge the tribunal's interpretation and would query whether it matters who owns the property as rates have to be paid by private owners and also on Northern Ireland Housing Executive properties;*

6.9 *In paragraphs 15 and 16 of the decision the tribunal accepted the respondent's argument without any substantial evidence or argument that the capital values already reflect the general tone of the valuation list in the locality. No evidence was produced to substantiate this;*

6.10 *When asked if Land and Property Services had installed noise level detection meters they replied that it was not their job;*

6.11 *The appellant has an issue with the respondent's representative at hearing regarding personal demeanour and that had not been reflected in the tribunal's findings;*

6.12 *The tribunal had not given substantial weighting to what the appellant referred to as being Article 8 of the Human Rights Act 1998, which the appellant argued expressly provided for the right to enjoy one's property free from noise, which he stated was expressly mentioned in Article 8 of the Human Rights Act 1998.*

THE TRIBUNAL'S DETERMINATION OF THE ISSUES

7. The tribunal notes the statutory power available to it on foot of Rule 21 of the Rules. The appellant has endeavoured to make out a case on one available statutory ground (the other grounds being discounted as inapplicable on the arguments) that the tribunal is entitled to conduct a review of its decision on that ground, being the "*interests of justice*" ground provided for by Rule 21 (d) of the Rules.

8. Examining carefully the appellant's submissions, the tribunal cannot see how the appellant has made out any sustainable or persuasive case on any of the points raised by him as grounds of possible review under the "*interests of justice*" ground contained within Rule 21 (d) of the Rules. The tribunal's decision has recorded in summary form the essential findings of fact derived from evidential material which was placed before it. The tribunal has carefully considered and weighed the submissions and the arguments made in the course of the original hearing and the tribunal has dealt with and has disposed of these in its decision. In the absence of any identified authority within the tribunal's own jurisdiction being drawn to the tribunal's attention, the tribunal is of the view that the "*interests of justice*" ground ought properly to be construed fairly narrowly; that certainly appears to be the accepted practice in other statutory tribunal jurisdictions. Thus the "*interests of justice*" ground might, for example, be seen to apply to situations such as where there has been some type of procedural mishap. One illustration of this might be a situation where the tribunal had prevented a party from arguing an essential part of any case, or perhaps where there was some type of procedural imbalance or injustice applicable to the conduct of any hearing. In the course of the oral hearing the tribunal carefully explored these possibilities with the appellant and the appellant's contentions in that respect and the tribunal does note, having listened to the appellant, that the appellant does concede that he did get a fair and proper opportunity to provide his evidence and arguments at the original hearing of the matter which resulted in the decision. Nothing therefore appears to arise concerning the manner in which the original hearing was conducted by the tribunal and indeed that was expressly accepted by the appellant. Generally, it is broadly recognised that the "*interests of justice*" in any case must properly encompass doing justice not just to the dissatisfied and unsuccessful party who is seeking a review but also to the party who is successful. Further, there is an important public interest in finality of litigation. The overriding objective contained within the tribunal's Rules also bears upon the matter.

9. The tribunal takes particular note of a number of matters. Firstly, the appellant was afforded at the original hearing of the matter by the tribunal the opportunity to take whatever time he wished to present his case in the manner in which he desired and to address and properly to deal with, as he wished, the respondent's case and evidence. Having initially contended that the hearing, as the appellant put it, ended abruptly, the appellant did concede that he was afforded a fair and proper opportunity to present all of his arguments and he did indeed agree with the recollection of the tribunal panel members that he was asked at the end of the hearing if he had any further points which he wished to make and, having been so invited, he declined to make any further arguments or submissions. The appellant has, to a degree, sought to re-argue at this hearing a number of issues. Mere dissatisfaction with the decision, without more, is insufficient. Thus, the tribunal has considerable difficulty in seeing how there are any available grounds to constitute the

proper basis of a review of the tribunal's decision, in the "*interests of justice*". Examining the case for review made by the appellant, the issues raised were as follows (in italics) with the tribunal's determination set out in each case below: -

9.1 *The appellant had made a statement that appeared to have gone missing as no reference had been made to that statement in the tribunal's decision;*

The statement did not go missing and was with the tribunal's papers and had properly been taken account of by the tribunal in reaching the decision. It is important to stress (see for example the following extract from the decision of the Court of Appeal in **Meek v Birmingham District Council [1987] IRLR 250** per Bingham LJ) that in giving its reasons "... a tribunal is not required to produce an elaborate formalistic product of refined legal draughtsmanship, rather the essential but fundamental requirement is that the reasons should enable the parties to know why they have won or lost..."

9.2 *Land and Property Services in the Presentation of Evidence had described the subject property as "constructed of brick" but that was incorrect and the property was constructed of concrete blocks with pebble dash render finish and standing on a 3 to 5 tier brick plinth. That was seriously misleading and showed a degree of carelessness on the part of the Land and Property Services valuer.*

The issue raised is not in the view of the tribunal sufficient to ground a successful review as the discrepancy in description was not raised by the appellant at hearing and before the decision was issued and is not new evidence of any materiality which has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then.

9.3 *Land and Property Services on 17 April 2013 were allowed to submit a late response in response to the appellant's response of 3 April 2013 and did not sign the declaration to that submission of evidence. The tribunal dates were delayed because of that and (unspecified) telephone calls went unanswered (dates and times were available if required later).*

The tribunal carefully explored this issue and submission with the appellant and obtained some further details from the appellant concerning this matter and the details of the telephone calls referred to. The tribunal does note that the so-called late response was indeed received by the appellant a number of weeks in advance of the listed hearing date and in good time to prepare for the hearing and thus no injustice was thereby incurred. This particular issue is not sufficient to ground a successful review. This matter was not raised by the appellant at hearing and before the decision was issued.

9.4 *The properties chosen by Land and Property Services in no way represented a true comparison to the subject property and the respondent's submission of evidence should not have been allowed.*

Any party to a matter is entitled to adduce relevant evidence and the relevance and weight of evidence is properly to be determined by the tribunal in carrying out its judicial function. The determination of the matter and reasons for that determination are set forth in the decision in the light of the evidence, the findings of fact and the application of the law. Accordingly, the issue mentioned is not sufficient to ground a successful review.

- 9.5 *The tribunal in the decision appeared to criticise Mr McLean's valuation of the subject property at £250,000 but accepted that respondent's original valuation of £400,000 which was ridiculous and unjustifiable in the extreme. Article 54(3) of the Rates (Northern Ireland) Order 1977 has not been properly interpreted by the tribunal but there was favour shown towards the respondent.*

The decision at paragraph 13 (mentioned also at paragraph 7) clearly explains why the tribunal addressed the McLean valuation as it did in terms of weight. Weight and value of evidence is properly to be determined by the tribunal in carrying out its judicial function and in providing a proper reason or reasons for any determination. The issue mentioned is not sufficient to ground a successful review.

- 9.6 *In paragraph 6 of the decision there appears a serious anomaly in that out of the four properties chosen by the respondent only one property had chosen to query their valuation. The other three had not queried their valuations and had (possibly) been over paying their rates*

The determination of the matter and reasons for that determination are set forth in the decision in the light of the evidence, the findings of fact and the application of the law. The tribunal has accepted, both in this and in many other cases, the evidence base of unchallenged capital valuations and the existence of a settled tone of the valuation list. The issue mentioned is not sufficient to ground a successful review.

- 9.7 *In paragraph 13 of the decision the tribunal had made reference to the appellant not selecting specific properties to compare against the subject property. Selecting other properties would have been in breach of the human rights of other property owners who had not given their written consent for their properties to be used in that manner.*

The statutory basis for valuation has been mentioned in the decision. The comparative method is and has been employed by the respondent and is required to be applied by the statutory provisions. Any respondent is free to present relevant evidence to the tribunal in support of any case with reference to the comparative method of valuation and the proper application of the statutory provisions. Capital valuation information in regard to domestic hereditaments in Northern Ireland is publicly available. The issue mentioned is not sufficient to ground a successful review.

- 9.8 *In paragraph 14 of the decision the appellant would challenge the tribunal's interpretation and would query whether it matters who owns the property as*

rates have to be paid by private owners and also on Northern Ireland Housing Executive properties.

The content of paragraph 14 of the decision is clear and raises no issue sufficient to ground a successful review.

9.9 *In paragraphs 15 and 16 of the decision the tribunal accepted the respondent's argument without any substantial evidence or argument that the capital values already reflect the general tone of the valuation list in the locality. No evidence was produced to substantiate this.*

This is mentioned in 9.6 above. The tribunal has accepted, in this and in many other cases, the evidence base of unchallenged capital valuations and the existence of a settled tone of the valuation list. The issue mentioned is not sufficient to ground a successful review.

9.10 *When asked if Land and Property Services had installed noise level detection meters they replied that it was not their job.*

No point arises from this and the issue mentioned is not sufficient to ground a successful review.

9.11 *The appellant has an issue with the respondent's representative at hearing regarding personal demeanour and that had not been reflected in the tribunal's findings.*

The tribunal did not at hearing observe anything prejudicial to the affording of a fair and proper hearing to the appellant nor was any issue raised at hearing by the appellant in regard to this suggestion. No point arises from this and the issue mentioned is not sufficient to ground a successful review.

9.12 *The tribunal had not given substantial weighting to what the appellant referred to as being Article 8 of the Human Rights Act 1998, which the appellant argued expressly provided for the right to enjoy one's property free from noise, which he stated was expressly mentioned in Article 8 of the Human Rights Act 1998.*

The tribunal notes that the appellant in this submission appears to be referring to the Human Rights Act 1998, Sch.1, Pt. 1, Article 8, which imports Convention rights in the UK domestic law, the specific Convention right being as follows:-

"Article 8 Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

The appellant had contended in his oral submissions that Article 8 made express reference to some manner of a right to enjoy property free from noise. He maintained that Article 8 made an express reference to this in that “noise” was expressly mentioned, and that the tribunal ought to have taken that into account in the decision. The appellant did not draw the tribunal's attention to any specific provision other than Article 8 nor to any specific text of any UK statutory or Convention provision when invited by the tribunal to do so. The specific terms of the forgoing provision will be noted. The tribunal did not discern anything emerging from this submission sufficient to constitute a proper ground of a review of the decision. No point of substance arises from this and the issue mentioned is not sufficient to ground a successful review.

- 10 The tribunal’s unanimous determination is that nothing presented by the appellant affords any basis for the decision to be reviewed. Accordingly the tribunal’s decision is affirmed as promulgated and appellant’s application for a review is dismissed by the tribunal, without further Order.

**Mr James V Leonard. President
Northern Ireland Valuation Tribunal**

28th August 2013