

**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: 42/18**

**BRENDAN DEVLIN – APPELLANT**

**AND**

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

**Northern Ireland Valuation Tribunal**

**Chairman: Mr Charles O'Neill**

**Members: Mr H McCormick MRICS and Ms Noreen Wright**

**Date of hearing: 4 December 2019, Belfast**

**DECISION**

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

**REASONS**

**Introduction**

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order"). Both parties were content that the matter be dealt with on the basis of written representations.
2. The appellant by Notice of Appeal appealed against the decision of the Commissioner dated 13 February 2019.
3. This appeal is in respect of the valuation of a hereditament situated at 18 Harberton Square, Belfast, BT9 6WN ('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"). The tribunal does not intend in this decision to set out the statutory provisions of article 8 of the 2006 Order, which amended article 39 of the 1977 Order as regards the basis of valuation, as these provisions have been fully set out in earlier decisions of this tribunal. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in this matter.

## **The evidence**

5. The tribunal had before it the following documents:
  - (a) The Commissioners Decision dated 13 February 2019;
  - (b) The appellants' Notice of Appeal received by the tribunal office on 11 March 2019;
  - (c) A document entitled 'Presentation of Evidence' dated 6 September 2019 and prepared on behalf of the respondent Commissioner by Nuala Burke MRICS and submitted to the tribunal for the purposes of the hearing;
  - (d) Submission by the appellant in respect of the Presentation of Evidence dated 20 September 2019;
  - (e) Email from the respondent dated 15 October 2019;
  - (f) Correspondence between the tribunal office and the parties.

## **The facts**

- (1) The subject property consists of a privately built two storey semi-detached house at 18 Harberton Square, Belfast, BT9 6WN ('the subject property'). The property was built about 2018. The property has a gross external area (GEA) of 170.4m<sup>2</sup> and a separate outbuilding of 11.2m<sup>2</sup>.
- (2) The subject property was entered into the valuation list with a capital value of £360,000 on 2 November 2018. This decision was appealed to the

Commissioner of Valuation and the capital valuation was confirmed as £360,000 on 13 February 2019.

(3) The decision of the Commissioner of Valuation was appealed to this tribunal.

### **The appellant's submissions**

6. The appellant submits that the capital valuation of the property is incorrect and that the correct valuation should be £300,000. He relies on several grounds to assert this as outlined in the paragraphs below.
7. The appellant states that four of the five properties relied on by the respondent as properties comparable to the subject property are all within the Harberton development. His argument is not that the subject property has been wrongly valued in comparison to the other Harberton properties but that the respondent has wrongly set the standard for valuation of those properties similar to his own.
8. The appellant also refers to the following properties:
  - (a) 5 Malone Park Gardens, which has a GEA of 172m<sup>2</sup> and a capital value of £325,000
  - (b) 7 Malone Park Gardens, which has a GEA of 154.08m<sup>2</sup> and a capital value of £295,000
  - (c) 8 Malone Park Gardens, which has a GEA of 156.49 m<sup>2</sup> and a capital value of £295,000
  - (d) 9 Malone Park Gardens, which has a GEA of 181.78m<sup>2</sup> and a capital value of £330,000
  - (e) 15 Malone Park Gardens, which has a GEA of 176.57m<sup>2</sup> and a capital value of £300,000
  - (f) 8 Balmoral Avenue, which has a GEA of 216.83m<sup>2</sup> and a capital value of £350,000
  - (g) 23 Balmoral Avenue, which has a GEA of 207.80m<sup>2</sup> and a capital value of £340,000
  - (h) 33 Balmoral Avenue, which has a GEA of 173.00m<sup>2</sup> and a capital value of £310,000

9. The appellant indicates that only one of these in Malone Park Gardens, 9 Malone Park Gardens has been referred to in the respondent's Presentation of Evidence. He further contends that the Malone Park Gardens development shares many characteristics with the new Harberton development in which the subject property is located in that it is a large number of recently built semi-detached properties with habitable space in the region of 154m<sup>2</sup> to 181m<sup>2</sup> and which have relatively small gardens/driveways. The two developments are located in close proximity on either side of Balmoral Avenue.
10. The appellant further argues that there is no provision in the Rates (NI) Order 1977 to take account of a busy street in relation to valuation matters. He states that a property on Balmoral Avenue is highly sought after and does not suffer any decrease in selling price due to its position in relation to surrounding areas. The appellant considers that this subjective account in relation to the subject property should not have been taken into account and that his own property faces a three storey high apartment block which causes sunlight to be blocked for a significant part of the day. If one were to take the logic of the busy street argument then the subject would be regarded as less desirable due to this factor and its capital value would be lower.
11. In relation to the location of properties the appellant states that properties are valued according to their locality basis, that is their convenience to local amenities such as leisure facilities, recycling depots and public spaces rather than subjective opinions as in the respondent's Presentation of Evidence. Properties on Balmoral Avenue and Malone Park Gardens are in the same locality as the subject and therefore it is incorrect that there should be a higher capital value for Harberton properties as convenience to local amenities is the exact same for all these properties.
12. The appellant further states the respondent has indicated that the property on Balmoral Avenue is a 1930s house. He argues that many older properties have significantly higher desirability due to architectural features and can therefore command higher prices than newer properties. Likewise, some buyers prefer newer properties. In this respect he contends that the respondent has noted

subjective opinions with regard to capital values and this is not in accordance with the provisions of the Rates (NI) Order 1977.

### **The respondent's submissions in relation to comparable properties**

13. 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 dated 6 September 2019, 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 12 Harberton Lane, Belfast. This is a privately built post 1990 semi-detached house. It has habitable space of 176.43m<sup>2</sup>. The assessed Capital Value is £360,000.
- (b) The second comparable referred to was 5 Harberton Park Gardens, Belfast. This is a privately built post 1990 semi-detached house. It has habitable space of 169.42m<sup>2</sup> and an outbuilding of 11m<sup>2</sup>. The assessed Capital Value is £360,000.
- (c) The third comparable referred to was 20 Harberton Square, Belfast. This is a privately built post 1990 semi-detached house. It has habitable space of 170.29m<sup>2</sup>. The assessed Capital Value is £360,000.
- (d) The fourth comparable referred to was 2B Dorchester Park, Belfast. This is a privately built post 1990 semi-detached house. It has habitable space of 190.36m<sup>2</sup>. The assessed Capital Value is £400,000.

14. The respondent also included comments in relation to some of the examples given by the appellant. These comments were as follows:

- (a) The properties at Malone Park Gardens are accessed just off the busy Balmoral Avenue and are approximately 0.6km from the subject (as the crow flies).

- (b) 9 Malone Park Gardens has a habitable space of 181m<sup>2</sup> and an outbuilding of 8m<sup>2</sup>. This property was built in 2015 and has a capital value of £330,000.
- (c) 23 Balmoral Avenue is an inter-war semi-detached house constructed around 1930. It is listed in the valuation list as having an area of 207m<sup>2</sup> with a capital value of £340,000. Access to the property is directly off Balmoral Avenue which is listed with the data as a site negative (busy street). The respondent states that none of the properties listed by the appellant alter its opinion and it still considers the property to be fairly assessed in comparison with the most suitable properties.

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

15. 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 £360,000. On behalf of the Commissioner it has been contended that this figure is fair and reasonable in comparison to other properties. The appellant's contentions are as stated above and the appellant contends in the written appeal that the proper valuation should be £300,000.
16. 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.
17. The general rule as to the basis of the value to be taken into account is contained in article 7(1) of the 1977 Order (as amended) in that
  - "(a) Subject to the provisions 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.

(b) 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.”

18. The relevant capital valuation date is 1 January 2005.

19. It is also 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..."

20. In relation to the comparable properties, the tribunal has considered carefully all the evidence put forward by the appellant and the respondent.



21. The appellant states that four of the five comparison properties referred to by the respondent (including the subject property) are in the Harberton development. He uses this to argue that the respondent has wrongly set the standard for valuation of properties in this development itself. However, from the tribunal's perspective it is important to remember that in establishing capital value "regard shall be had to the capital values in the Valuation List of comparable hereditaments in the same state and circumstances" as the subject property.
22. In this case the tribunal prefers the evidence in relation to 12 Harberton Lane, Belfast. This property is a privately built semi-detached house, built post 1990. It has habitable space of 176.43m<sup>2</sup> which is bigger than the subject property. It has a capital valuation of £360,000 which is the same as the capital valuation of the subject property.
23. The capital valuation of the subject is also supported by the valuation of 5 Harberton Park Gardens which again is a privately built semi-detached house built post 1990. It has habitable space of 169.42m<sup>2</sup> and an outbuilding of 11m<sup>2</sup>. It is nearly the same size as the subject and has an outbuilding of the same size. It has a capital valuation of £360,000 which is the same as the subject property.
24. The capital valuation of the subject property is also supported by the valuation of 20 Harberton Square, Belfast, which is slightly smaller than the subject and does not have an outbuilding.
25. Also, the comparable 2B Dorchester Park, Belfast is supportive of the capital valuation of the subject in that it is larger than the subject having habitable space of 190.36m<sup>2</sup> and has a capital valuation of £400,000.
26. In relation to the comparables in Malone Park Gardens forwarded by the appellant, and detailed above, the tribunal gives less weight to these as they are further away from the subject property. Therefore, the tribunal prefers the comparables given by the respondent.

27. In relation to the properties at Balmoral Avenue which are referred to by the appellant, the tribunal notes that 23 Balmoral Avenue is an inter war semi-detached house and fronts onto Balmoral Avenue. Therefore, it is not in the same state and circumstance as the subject and also fronts onto a busy street.

28. In this matter the tribunal has to have regard to those properties which it considers to be in the same state and circumstances as the subject property. Therefore, the tribunal is persuaded by the comparables forwarded by the respondent.

29. The decision of the tribunal therefore is that the appellant has not provided sufficient evidence to displace the presumption of correctness of the valuation list and therefore the unanimous decision of the tribunal is that the capital valuation of the subject property at £360,000 is correct and that the appeal by the appellant is dismissed.

30. The tribunal is very grateful to both the appellant and the respondent for the well prepared written presentations to the tribunal in this matter.

**Mr Charles O'Neill**

**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to the parties: 31 January 2020**