

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: 29/21

GEORGE MITCHEL EMERSON - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr C Kenton FRICS & Mrs N Wright

Hearing: 17 January 2022, Belfast

DECISION

The unanimous decision of the tribunal is that the appeal is dismissed.

REASONS

Introduction

1. This appeal consists of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, by Notice of Appeal (Form 3) appealed against the decision of the Commissioner of Valuation in a Valuation Certificate in respect of the capital valuation of a hereditament situated at number 61 Lisrace Road, Newtownbutler, County Fermanagh BT92 6PX ("the property").
2. The appellant, in making this appeal, indicated that he was content for the appeal to be disposed of by written representations. The tribunal sat to hear the matter on 17 January 2022. The tribunal, consequent upon the hearing, requested from the respondent additional evidence and information to assist in decision-making. This was provided by the respondent and then shared with the appellant. The appellant was afforded an opportunity to make further comment or submission, which he did, and the respondent responded briefly to the latter. The tribunal has accordingly considered all evidence, information and submissions available in the matter in now reaching a determination of this appeal.

The Law

3. The relevant statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). As is now the case in all determinations of this nature, the tribunal does not intend in this decision fully to set out the detail of the statutory provisions of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, for the reason that these provisions have been fully set out in many previous decisions of the Valuation Tribunal, readily available. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter. Antecedent Valuation Date ("AVD") is the date to which reference is made for the assessment of Capital Values in the Valuation List. Until a further domestic property revaluation occurs, Capital Values are, under the statutory regime, notionally assessed as at 1 January 2005, that being the AVD for the purposes of the domestic rating scheme. The legislation, at Schedule 12, paragraph 7 of the 1977 Order provides that the Capital Value of a hereditament shall be the amount which, on the assumptions mentioned (materially paragraphs 11 and 12 of Schedule 12, the details of which are mentioned below), 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. The relevant paragraphs of Schedule 12 include the following statutory assumptions, which provide that –

- The hereditament is sold free from any rentcharge or other incumbrance;
- 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; and
- The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

The Issue to be Determined and the Evidence

4. A central issue in this case relates to the status and location of the property at the material time. Thus, the proper focus of the tribunal ought to be placed upon the twin issues of any locational disadvantage which might be affecting the property and which might accordingly have an effect upon Capital Value and also the issue of agricultural status and any issue regarding rating law. In the appellant's Form of Appeal he expresses matters as follows: "*Having got the house valued by a local auctioneer because of factory noise and large trucks and forklifts operating from 8.00 am to 12.00 pm daily, his valuation is £75,000*". The tribunal had before it the appellant's Form of Appeal to the tribunal (Form 3) dated 7 June 2021 and a copy Order from the tribunal extending time for the appeal dated 20 December 2021 and the documents also included the following:
 - 4.1 Copy of a report from Mr Gordon Robinson (M.N.A.E.A.) addressed to the appellant and dated 7 December 2017 (together with copy of an extract seemingly from the same report from Mr Robinson received by the tribunal from the appellant on 8 June 2021). This report (after having provided a brief description of the property) states as follows: "**Valuation:** *taking all of the above into consideration and with the complete lack of privacy we would value the property at £75,000 (seventy five thousand pounds sterling).*"
 - 4.2 Copy Valuation Certificate in regard to the property, issue date 29 March 2021, signed by the Commissioner of Valuation.

4.3 A document dated 19 October 2021 consisting of a Presentation of Evidence prepared on behalf of the Commissioner, as respondent, by Mr Eugene McGrade MRICS and submitted to the tribunal. After having initially considered the case at the 17 January 2022 hearing, the tribunal made a determination that it required additional evidence to assist and this evidence was requested from the respondent. A revised Presentation of Evidence from Mr McGrade, dated 22 February 2022, was then submitted to the tribunal. Any further references below are made in reference to this revised Presentation of Evidence (as opposed to what is contained in the initial evidence document). This revised document shall be referred to, for simplicity, as being the “Presentation of Evidence”, this latter being the definitive statement of evidence presented to the tribunal on behalf of the respondent. This Presentation of Evidence includes a timeline which indicates, in a little detail, the following material dates:

4 June 2020: The appellant submitted an application to the District Valuer requesting a reduction in Capital Value to reflect the close proximity of an adjoining commercial premises. The appellant referred specifically to issues with noise.

15 December 2020: A valuer inspected the property on behalf of the District Valuer and confirmed that the Gross External Area (GEA) was larger than previously recorded, increasing from 96 m² to 155 m². Additionally, an outbuilding measuring 9.6 m² was noted, together with the removal of the garage. As a result, the Capital Value was increased from £100,000 to £130,000. A 10% allowance was then adopted to reflect the nuisance caused by the adjoining commercial premises. This resulted in an amended, unadjusted, Capital Value of £117,500. The District Valuer concluded that the agricultural allowance, which had been applied prior to this application, should be retained. A Valuation Certificate was issued on 5 February 2021 confirming this outcome.

2 March 2021: The decision of the District Valuer was appealed to the Commissioner of Valuation. The 10% allowance awarded was considered to be fair and reasonable. However, it was noted that there was further habitable space at first floor level which had not previously been included in the GEA. An amended GEA of 206.4 m² was recorded, resulting in an increase in the Capital Value to £145,000. This amended figure, less the 10% allowance, produced an amended Capital Value of £130,000. The agricultural allowance was retained in the light of the comments made by the District Valuer. A Valuation Certificate was issued on 29 March 2021 confirming this outcome.

7 June 2021: The decision of the Commissioner of Valuation was appealed to the Valuation Tribunal.

- 4.4 Copies of various emails to the Tribunal Secretary from the appellant and on behalf of the respondent and emails from the Tribunal Secretary to the parties. These communications included the request from the tribunal for additional evidence and information, which resulted in the production of the (revised) Presentation of Evidence. The appellant, further, responded to the Presentation of Evidence and his response is by letter to the tribunal dated 7 March 2022 which reads as follows: *“Further to my Appeal Letter June 2021 Re Rates Valuation on my Dwelling at 61 Lisrace Road. The yard at rear of Bungalow has been extended to include two large industrial sheds an office block and a car park for eighty cars. This has greatly increased the traffic and noise going on twenty-four seven. Many thanks for your Time and Patience.”* This further communication from the appellant was copied to the respondent, the resultant reply from the respondent being: *“If the commercial premises to the rear of the property has now been extended and Mr Emerson feels it has further impacted his valuation, he would need to submit a fresh application to the District Valuer. His current appeal can only examine the circumstances as they were at the date of the previous District Valuer’s certificate.”*
5. The Presentation of Evidence provides a property description (with which basic description the appellant does not appear to take issue). The property is a privately built 1966-1990 detached 1.5 storey chalet constructed circa 1970. It has a GEA of 206.4 m² and an outbuilding measuring 9.8 m². The property is situated in a rural location on the Lisrace Road, approximately 2.5 miles from Magheraveely and 3 miles from Newtownbutler. Photographs of the property are provided. Specifically there is an aerial view helpfully indicating the location of commercial premises, being contiguous or very close to the property.
6. In the Presentation of Evidence Mr McGrade reports that he met with the appellant at the property on 12 March 2021 and measured the property externally, confirming a GEA of 155 m² at ground floor level. Mr McGrade noted a gable window to the side and a Velux window to the rear, at first floor level. The appellant confirmed to Mr McGrade that the property included a first floor area which was accessed via a fixed staircase. Mr McGrade explained that this area would need to be included in the GEA. In accordance with Covid-19 restrictions Mr McGrade was unable to inspect the property internally. The appellant confirmed that he was content for Mr McGrade to estimate the habitable space at first floor level. As a result, Mr McGrade calculated an amended GEA of 206.4 m². It appears, assessing the content of the appellant's appeal and any matters which he wishes to raise, that the appellant does not take issue with any of the foregoing content of Mr

McGrade's report concerning the assessment, as revised, of the GEA in respect of the property. The Presentation of Evidence further reports that during Mr McGrade's inspection he also noted the position of the adjoining commercial premises located to the rear of the property. Mr McGrade reports that this business appears to have been operating from the site for a number of years and specialises in the manufacture of garage doors. The proximity of these commercial premises did appear to have a negative impact on the property, in Mr McGrade's opinion, specifically in terms of the visual impact and the potential for noise nuisance. On that basis, Mr McGrade was content that an allowance should be applied to the property (and also to the neighbouring 63 Lisrace Road). Mr McGrade then proceeded (as reported in the Presentation of Evidence) to examine the issue of the correct level of allowance. He identified three properties which had also been awarded allowances to reflect similar nuisance factors.

7. The following three properties are accordingly identified in the Presentation of Evidence, with photographic evidence also provided respect of each:-

63 Lisrace Road, Newtownbutler, County Fermanagh BT92 6PX. This property is located in close proximity to the same manufacturing premises. A 10% of allowance has been awarded to reflect the level of nuisance experienced and that level of allowance applied has not been challenged. Additional details of this property are set forth in the Appendix to the Presentation of Evidence.

197 Dernawilt Road, Rosslea, County Fermanagh BT92 7GE. This property has similarly been awarded the 10% allowance to reflect the fact that it is located in close proximity to a substantial manufacturing premises. It is considered that these premises encounter a similar level of nuisance in terms of the visual impact and noise experienced by the property. Additional details of this property are set forth in the Appendix to the Presentation of Evidence.

46 Annaghilly Road, Rosslea, County Fermanagh BT92 7BB. This property has also been awarded the 10% allowance. This is stated to reflect the nuisance caused by the close proximity of a working farm and a number of agricultural outbuildings. Additional details of this property are set forth in the Appendix to the Presentation of Evidence.

8. It is Mr McGrade's view that these latter premises encounter a similar level to the property of nuisance in terms of visual impact and noise. Regarding assessment of Capital Value, having confirmed the appropriate level of allowance to be applied, Mr McGrade has identified what he considers to be the most appropriate comparable properties. These are all privately built,

detached, properties which are situated in a rural location within the Rosslea Ward. A location map is provided. Mr McGrade submits that the most useful of these is 197 Dernawilt Road which he states is comparable to the property in terms of age, character and size and which, similarly, is adjacent to manufacturing premises. Mr McGrade then submits that an unadjusted starting Capital Value of £145,000 is well-supported by the stated comparables referenced. A 10% allowance is then considered appropriate, in the submission, to reflect the proximity and nuisance caused by the adjoining manufacturing premises. This equates to an amended Capital Value figure of £130,000. Thereafter, an additional 20% allowance is applicable the way of an agricultural allowance, all of which means that the adjusted Capital Value is computed at a figure of £104,000.

9. The Appendix to the Presentation of Evidence provides further details in respect of a total of eight identified comparables, including the property. These are as follows (with a helpful location map) :-

1. **61 Lisrace Road Newtownbutler BT92 6PX** (the property). Rosslea Ward. Privately built 1966-1990 detached chalet (built 1970). House and agricultural outbuilding. Average external repair. 1.5 storey. GEA 206.4 m². Outbuildings 9.8 m². The Capital Value is £130,000 (this is represented by a Capital Value of £145,000 less a 10% allowance for nuisance from adjoining manufacturing premises). A 20% agricultural allowance has also been awarded, which reduces the Capital Value to £104,000.
2. **197 Dernawilt Road, Dernawilt West BT92 7GE**. Rosslea Ward. Privately built 1966-1990 detached chalet (built 1976). House outbuilding and garden. Average external repair. 1.5 storey. GEA 224 m². Outbuildings 8 m². Rural location 1.5 miles from the property. The Capital Value is £155,000 (this is represented by a Capital Value of £170,000 less a 10% allowance for nuisance from adjoining manufacturing premises).
3. **75 Drumrady Road, Magheraveely BT92 6NP**. Rosslea Ward. Privately built 1966-1990 detached bungalow (built 1977). House outbuilding and garden. Average external repair. Single storey. GEA 135 m². Garage 36 m². Rural location 1.4 miles from the property. Significantly smaller GEA than the property. The Capital Value is £135,000.
4. **55 Drumshancorick Road, Rosslea BT92 7HN**. Rosslea Ward. Privately built 1966-1990 detached chalet (built 1986). House outbuilding and garden. Average external repair. 1.5 storey. GEA 171 m². Garage 23 m². Rural location 5 miles from the property. The Capital Value is £150,000.

5. **34 Drumshancorick Road, Rosslea BT92 7HF.** Rosslea Ward. Privately built 1966-1990 detached chalet (built 1989). House outbuilding and garden. Average external repair. 1.5 storey. GEA 230.6 m². Garage 28.1 m². Rural location 4.3 miles from the property. The Capital Value is £185,000.
 6. **46 Carneyhome Road, Newtownbutler BT92 6AA.** Rosslea Ward. Privately built 1946-1965 detached bungalow (built 1955). House (agricultural). Average external repair. 1 storey. GEA 136 m². Rural location 4.6 miles from the property. Significantly smaller GEA and an older property. The Capital Value is £130,000 (unadjusted).
 7. **46 Annaghilly Road, Rosslea BT92 7BB.** Rosslea Ward. Privately built post-1990 detached house (built 2012). House and garden. Average external repair. 2 storey. GEA 178 m². Rural location 3.6 miles from the property. The Capital Value is £135,000 (this is represented by a Capital Value of £150,000 less 10% allowance for nuisance from adjoining agricultural operation and outbuildings).
 8. **63 Lisrace Road, Newtownbutler BT92 6PX.** Rosslea Ward. Privately built pre-1919 house (built 1910). Average external repair. 2 storey. GEA 166 m². Rural location in close proximity to the property, but an older property. The Capital Value is £99,000 (this is represented by a Capital Value of £110,000 less 10% allowance for nuisance caused by adjoining manufacturing premises).
10. The tribunal has reviewed the comparables evidence and particularly the additional evidence which was incorporated in the (revised) Presentation of Evidence, the enhancement of the evidence being helpful to the tribunal in reaching a determination. The tribunal's scrutiny must be directed to the situation prevailing at the time of the appeal. The tribunal carefully scrutinised those properties, in particular, where there was evidence of impairment due to agricultural or commercial operations existing in close proximity to a domestic dwelling and the level of adjustment made. It appears, from this small sample, that there is no range of adjustment, in percentage terms, applied in assessing Capital Valuation. It occurs (again from a small number of examples, so the tribunal must see matters in that context) and that there might be a somewhat "broad brush" approach taken, noting that there seems to be a fixed amount of 10% abatement only applied. The reality must be that there exists a broad spectrum of possible impairment or disadvantage, where a "one size fits all" approach might well be inappropriate; that must of necessity dictate a corresponding range of potential percentage allowances. However, the tribunal heard no further evidence or explanation from the respondent about that. It might be helpful, in future cases of this nature, to have some additional information concerning the issue.
11. In the instant case the general "tone" evidence is useful. Assessing all of the evidence, the tribunal does not detect any significant deficiency or manifest

error in the assessment of the base (unadjusted) Capital Value of the property. Examining the range of unadjusted Capital Values concerning the eight properties presented, including the property, the valuation regime applied to the property seems to have correctly and accurately assessed the Capital Value. The situational disadvantage has then been catered for by a 10% reduction, which the tribunal upon the evidence and facts in this case judges to be appropriate (and the agricultural allowance applied thereafter). The evidence from the report from Mr Gordon Robinson was not of much assistance as it seems to consist of a then-contemporary market valuation, referenced to December 2017, whereas, as mentioned above, the tribunal must consider AVD-referenced Capital Values. Mr Robinson's report, further, provides no insight or specific information concerning any specific reduction upon full valuation to be applied because of situational disadvantage.

12. As the tribunal has often observed, there is a statutory presumption contained within the 1977 Order, Article 54(3). Because of this, any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown. In order to succeed in an appeal to the tribunal, any appellant must either successfully challenge and displace that statutory presumption of correctness or perhaps the Commissioner's decision on appeal, objectively viewed, must be seen by the tribunal to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the Capital Value to an appropriate figure. The tribunal, in assessing this appeal, saw nothing in the general approach taken to suggest that this has been approached for assessment in anything other than the prescribed manner, as provided for in Schedule 12 of the 1977 Order. This being so, as the appellant has not put forward any effective and compelling challenge to the respondent's schedule of comparables nor any evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation, the presumption of correctness is not displaced.

13. For these reasons the tribunal's unanimous decision is that the appellant's appeal cannot succeed and accordingly, the appeal is dismissed.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 12 April 2022

