

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 V Leonard, President

Members: Mr C Kenton FRICS and Mrs N Wright

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 12 April 2022 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 12 April 2022. The Secretary received on 25 April 2022 an email from the appellant dated 24 April 2022 ("the review request") which was taken to constitute a request to the tribunal to review the decision. The appellant raised issues that shall be referred to further below. The full text of the review request reads as follows:-

"Your ref NIVT29/21

24/04/2022

Dear sir I wish to appeal against the Tribunals Decision in regard to the noise and nuisance disturbance in relation to my home at 61 Lisrace Road Newtownbutler,

*.
My grounds of appeal is that the presentation of evidence in relation to eight identified comparable places does not reflect the noise and disturbance at our home which is six days a week night and day caused by forklifts and heavy equipent .*

In light of this I would ask the tribunal to please review your decision.

Yours faithfully Mitchel Emerson."

2. The review request was copied to the respondent and the respondent thereby was duly notified of the appellant's request for a review and it was indicated that the respondent did not wish to make any responding submissions.

3. A hearing of the review application was arranged and duly proceeded on 24 May 2022. The appellant indicated that he did not wish to attend and there was no representation by the respondent, it having been indicated that the respondent did not wish to make any submissions.

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 APPELLANT’S ARGUMENT

5. The tribunal, in the absence of any appearance or further argument, in addition to the content of the review request, considered the appellant’s review request and which of the foregoing statutory grounds might be available to the tribunal to conduct a review of the decision. The tribunal bore in mind that it would initially have to consider as being properly established grounds upon which the tribunal might proceed to review the decision. If the appellant failed to do that the review could not proceed. The review request did not make it fully clear, by specific reference to the statutory grounds, upon which ground or grounds the appellant wished to advance his case.

6. After consideration of the review request, the tribunal discounted Rule 21 (1) (a) (b) and (c) and 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 however heard no further argument on the appellant’s part as to why the tribunal should properly review the decision on foot of this ground, nor any argument from the respondent to the contrary.
7. The appellant’s argument in respect of the issue or issues raised by him in the review request appears to be that, in regard to the issue of noise and nuisance disturbance in relation to the property the respondent’s Presentation of Evidence in relation to eight identified comparables did not reflect the noise and disturbance at the appellant’s property, which the appellant asserts occurred for six days a week, both night and day, and which was caused by forklifts and heavy equipment.

THE TRIBUNAL’S DETERMINATION

8. The tribunal notes the statutory power available in Rule 21 of the Rules. The appellant seems to have endeavoured to make out a case on one available statutory ground (the other grounds having been discounted as inapplicable based on the content of the review request) to the intent that the tribunal is entitled to conduct a review of its decision upon the “interests of justice” ground, provided for by Rule 21 (d) of the Rules.
9. Examining the review request, the tribunal cannot see how the appellant has made out any sustainable or persuasive case for a possible review under the “interests of justice” ground. The appellant, in making the appeal, had indicated that he was content for the appeal to be disposed of by written representations. The tribunal had sat to hear the matter on 17 January 2022 and, consequent upon the hearing, had requested from the respondent additional evidence and information to assist in the decision-making. This had been provided by the respondent and it was 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 this. The tribunal had duly considered all evidence, information and submissions available in the matter in reaching the determination of the appeal. The decision was set forth in reasonably comprehensive form and issued to the parties.

10. The tribunal's decision recorded in summary form the essential findings of fact derived from all of the evidential material which was placed before it. The tribunal had carefully considered and weighed the submissions and the arguments made in the course of the original hearing and the tribunal had dealt with and had disposed of these in the decision.

11. 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. Therefore 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 hearing process the tribunal has carefully explored all of the appellant's contentions in the light of all of the available evidence. Nothing therefore appears to arise concerning the manner in which the original hearing was conducted by the tribunal, as agreed, by written representations. 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.

12. Here, it appears that the appellant has, to a degree, sought to re-argue in the review request certain 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". The matters mentioned are not sufficient to ground a successful review.

13. 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.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 30 May 2022