

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: 10/13

PATRICK AND JULIE FARLEY - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Michael Flanigan, Chairman

Members – Mr Eric Spence and Peter Sommerville

Hearing: 19th September 2013

Decision and Reasons

1. Both the appellant and the respondent appeared and the parties relied upon their written submissions and evidence before the Tribunal.
2. The subject property (“the property”) in this appeal is situated at 15 Lenagh Road, Aghalane, Mountfield, Omagh BT79 7PT . The property is owned and occupied by the appellant. The property is a detached house built circa 2009.
3. The appellant submitted an appeal against a notice of decision of the Commissioner for Valuation dated 15th May 2013 whereby the capital value had been reduced from £235,000 to £230,000. The appellant appealed against that decision by way of a Notice of Appeal dated 12th June 2013.
4. The following documents were presented before the Tribunal;
 - 4.1 Notice of Decision dated 15th May 2013;
 - 4.2 Notice of Appeal dated 12th June 2013; and
 - 4.3 Appellant’s submission, photographs and newspaper extracts together with the Respondents presentation of evidence.

5. The Law

- 5.1 The statutory provisions are set out in the Rates (Northern Ireland) Order 1977 (“the 1977 Order”) as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”)
- 5.2 The Tribunal considered the terms of the Schedule 12 of the 1977 Order as amended which states as follows:
1. Subject to the provisions of this Schedule, for the purposes 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.
 2. 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.
- 5.3 Article 54 (3) of the 1977 Order provides that on appeal any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.
- 5.4 The relevant capital valuation date is the 1st January 2005

6. The Evidence and Submissions.

The appellant raised a number of issues in relation to the property which he submitted had an effect on its valuation which may be summarised as follows:-

any enhancement in value by reason of the proximity of the property to a lake was offset by reason of the lake being a source of insect infestation between April and September. The effect of the insects was such that it required the house to have a ventilation system because the windows could not be opened at certain times of the year. The insects also impacted on the appellant and his family’s capacity to go outside on occasions due to the presence of a large number of midges in particular.

- 6.1 The appellant also submitted that the valuation of £235,000 was excessive by reason of the fact that a property of similar size with a garage situate at 2b Inisclan Road, Mountfield, had been given a valuation of £205,000.
- 6.2 The appellant submitted several pages from the Community Section of the Ulster Herald featuring the nearby village of Mountfield which included a photograph of the subject property in its location beside the lake. In addition the appellant also submitted copies of photographs in support of the evidence regarding there being large number of midges.
- 6.3 The appellant's evidence was that he purchased the site in 2004 for £50,000 with outline planning permission and had subsequently then built the subject property. In relation to the insect infestation, the evidence of the appellant was that the biggest problem was that of midges. This started around June and continued to the start of September. Other flies that created problems at the other times of the year were large number of the crane flies (daddy longlegs).
- 6.4 The respondent submitted a schedule of comparisons in relation to 8 properties in the area; two of which were immediately adjacent to the subject premises and the remainder of which were on adjoining roads.
- 6.5 The respondent had inspected the premises on 1st March 2013, 15th May 2013 and 23rd June 2013 and had not detected evidence of flies as a nuisance. The respondent submitted that comparables at 11 Lenagh Road and 13 Lenagh Road were most relevant and supported the valuation of the £230,000. The respondent's submission was that the valuation of 2b Inishglan Road could be distinguished from the subject property because it did not have an enhancement for a lake view and further that the garage had not been included in the assessment of £205,000. The valuation of 2b Inisclan Road had been referred to the District Valuer. The respondent's general submission was that the tone of the list supported the value of £230,000 and that in the absence of any manifest error the tribunal was bound to have regard to capital valuations in the list.

7. Decision of Tribunal

- 7.1 The Tribunal at the hearing of an appeal is empowered to make any decision that the Commissioner might have made, and to make an alteration to the Valuation List to give effect to its decision. The work of the Tribunal is however bound by the provisions of Article 54 (3), which directs that any valuation shown in a

Valuation List with respect to hereditament shall be deemed to be correct until the contrary is shown.

- 7.2 The provisions of Article 54 (3) are specific in that “any valuation in the list is deemed to be correct unless proved otherwise”. The phrase “any valuation” in this context includes not only the valuation of the property which is the subject of the appeal, but also any other valuations on the list that are relied upon. Undoubtedly this places a substantial onus on an Appellant to prove that the entry which relates to his own premises is incorrect. The standard of proof in these proceedings is on the balance of probabilities; and that standard must be satisfied on the basis of evidence submitted to the Tribunal.
- 7.3 In dealing with the instant case the respondent relied upon the Schedule of Comparisons. The Tribunal does not believe it is necessary to analyse each of the comparables here, but it is sufficient to note that the comparables included hereditaments of similar size and location to the subject premises, with valuations which substantially supported the Respondent’s valuation of £230,000.
- 7.4 The appellant raised and submitted a number of issues which he claimed affected the valuation of the property, in particular that any enhancement in value to the property caused by having a lake view was reduced by the insect infestations from the lake which occurred over much of the spring and summer months.
- 7.5 The Tribunal noted that the appellant’s biggest complaint was in relation to the large number of midges which emerged over of the summer that affected the enjoyment of the property. The appellant did accept that midges were a terrestrial fly only and their presence arose from the lands surrounding the lake as opposed to the lake itself. It is also the case that all other premises in the locality would be similarly affected by midges during the summer months.
- 7.6 The appellant denied that there was any particular enhancement value due to the lake view and submitted that many other houses in the area also had views over the Sperrin Mountains that could be considered equally attractive.
- 7.7 The subject lake, Lough a Tirrive was a relatively small lake estimated at 3 to 4 acres. The appellant’s evidence was that the lake was privately owned and had no amenity value.
- 7.8 Although the lake was relatively small, the Tribunal was satisfied that a lake view was a relevant consideration in assessing the capital valuation of the property and

an enhancement to the value of the property. The Tribunal noted that the caption to the newspaper article submitted by the appellant described Lough a Tirrive as “one of the hidden treasures of Mountfield”. In the circumstances the enhancement applied by the respondent of 5% was accepted as reasonable given the value of other premises nearby with a similar lake view.

- 7.9 The nuisance from large numbers of flies has arisen in relation to proximity to landfill sites however such infestations are usually taken into account along with other nuisances attached to such sites including lorries coming and going and plastic bags being blown onto nearby lands. The appellant did not submit any evidence to support the submission that a hatch of flies alone should be accepted as having an adverse effect on the amount which a willing purchaser would pay for given property. Examining the submissions and evidence from both parties the Tribunal’s unanimous decision is that the Commissioner’s decision on appeal is upheld and the appeal is dismissed.



Chairman: Michael Flanigan

NI Valuation Tribunal

Dated: 27th September 2013