

**NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED)
AND THE VALUATION AND TRIBUNAL RULES (NORTHERN IRELAND) 2007**

Case Reference: 42/15

BETWEEN:

MR & MRS PATRICK GALBRAITH - Appellants

-and-

**THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND -
Respondent**

NORTHERN IRELAND VALUATION TRIBUNAL

CHAIRMAN - Mr Keith Gibson B.L.

MEMBERS - Mr Robert McCann; Mr David McKinney FRICS

Review Hearing

1. On the 25th May 2017, this Tribunal issued a decision in respect of the Appellants' appeal against the assessment of the Capital Value of their property following an oral hearing on the 3rd May 2017. The appeal was allowed and both parties notified of the decision.
2. On the 7th June 2017, the Appellants applied for a review of the decision pursuant to Rule 21 of the Valuation Tribunal Rules (Northern Ireland) 2007. In accordance with Rule 21(4), the parties have an opportunity to be heard in any application for review pursuant to Rule 21. The Appellants wished to be heard orally and the Tribunal acceded to their request.

THE LAW

1. Rule 21 provides;

Review

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.

2. The power or ability to request a review is different from the appeal to the Lands Tribunal, pursuant to Article 54(a) of the Rates (NI) Order 1977 (as amended). Of the four grounds (a) to (d) referred to in Rule 21, the ground contained in paragraph (b) was acknowledged to be irrelevant. The Appellants in their notice seeking a review maintained that they were entitled to a review because;

(i) The decision was wrong because of errors;

(ii) It was required in the interests of justice.

3. Despite the seeming restriction placed on the Appellant to just 2 of the 4 grounds available, the Tribunal considered the Appellant's review in the context of Rule 21 as a whole.

4. At this point it is worth indicating that the review procedure is not intended to supplant the appeal procedure to the Lands Tribunal and the review is not intended to be a second bite at the cherry, for an Appellant who feels he has not submitted his best case to the Tribunal to have another go.

Rule 21 (1)(a)

5. The review procedure under this head is designed to correct obvious and fundamental flaws which arose because of human error, errors which when pointed out, are self-evident, patent and objectively, clearly erroneous. It is impossible to conjure up an exhaustive list of the type and nature of errors which may be relevant, but if a Statement of Case failed to be included or dealt with at an appeal or if the body of one decision somehow became attached to the title of a different decision, such are the types of error which would entitle any party, or the NIVT of its own initiative, to seek a review.

6. Applying such a test to each of the grounds put forward by the Appellant on a point by point basis it is obvious that none of the grounds referred to above come within the heading of an obvious and manifest error.

Rule 21 (1)(c)

7. The only item of information which could possibly pertain to Rule 21(1)(c) was the allegedly false information which the Appellant contends was supplied to the previous Valuation and Lands Tribunal. The basis and

grounds for the application are as set out in an email from Mr Patrick Galbraith. In it he alleges, inter alia, that:

- (i) During the hearing of the 3rd May the Applicants became aware that information regarding allowances for amenity sites and wind turbines had been withheld, resulting in them not having the relevant information to construct their case fully. (The allowances referred to by the Appellants pertain to reductions applied to the capital value to take into account matters such as the location of an amenity site or wind turbine, such was the situation in the present case.)

In relation to amenity sites the Appellants complained that some of the comparables included two properties, one at 44 Chapelhill Road, Newry and the other at an address which was undisclosed at the time. The Appellants complained that they were not given the full address which would have allowed them to measure distances and also queried as to whether or not comparables were withheld purposely by the Respondent.

This ground for review can be dealt with quickly. The onus is on the Appellants to call evidence to the Tribunal to indicate why the assessment by LPS, in the first instance, was incorrect. There is no reversal of the burden of proof on the Respondent to bring before the Tribunal evidence which it does not rely upon in making its decision, i.e. by way of disclosing properties which it does not think are directly comparable. To do so would place an undue and onerous burden on LPS, for reasons which are not justifiable. The suggestion therefore that the decision was somehow tainted or coloured by the failure of LPS to provide the address of a recycling plant is not justified.

The Appellants also sought to rely on a post hearing disclosure by LPS (in response to the Appellants' application for a review) that a similar property had received a 12.5% reduction (the property was 120m from the windfarm). Comparables disclosed post decision are new evidence but in this instance do not cause the original decision to be undermined. The fact that a reduction of above 10% was allowed does not mean that automatically the range referred to in the original decision should be altered. The Tribunal's original decision was based on the evidence before it and just as a subsequent decision of the Tribunal might cause a previous decision to be questioned it does not alter the validity of the present decision such as would lead to a review.

- (ii) Gross External Area.

This is dealt with at paragraphs 11 and 12 of the original decision and essentially comprised an allegation by the Appellants that an area above the garage (which was habitable) had never been utilised by them. The Tribunal

found as a matter of fact that it was a clearly habitable space and the Appellants, in their request for a review, point out that in the original decision it is commented that the floor is a wooden flooring, however, the Appellants in the review state that there is a vinyl covering laid on the floor to cover the area. It is utterly immaterial whether the floor covering is vinyl or wooden, as pertains to the Tribunal's finding on the issue of habitation.

(iii) Wind Turbines

A request for a review is sought on the basis that at the hearing the Respondent produced other cases where reductions have been granted for the close proximity of wind turbines. The complaint is made that the Appellants "*could not discuss this during the hearing*". It is not understood exactly what is meant by the suggestion that they were unable to discuss the information. The information was provided during the course of the hearing and the Appellants were provided an opportunity to consider same. The information was clearly before the Tribunal and the information was considered by the Tribunal (paragraph 14). The Appellants seek a review whereby they can "*ask LPS to provide all the information on how many cases there are where allowances were granted in Northern Ireland*". There exists no provision for the serving of questions on one party by another in the context of appeals under the Rates Order or the Valuation Tribunal Rules. The Appellants at the hearing had an opportunity to ask questions on the issue of other cases where allowances had been granted. The purpose of a review is not to allow one party or another to, with the benefit of hindsight, seek further information or ask for further information which they think may have been relevant.

Conclusion

8. Having reviewed its previous decision, the Appellants have not made out any of their grounds justifying relief pursuant to Rule 21 and this Tribunal's original decision remains unaffected.

Mr Keith Gibson B.L. - Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to all parties: 6th December 2017