

**NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED)
AND THE VALATION AND TRIBUNAL RULES (NORTHERN IRELAND) 2007
Case Reference: 42/15**

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

Introduction:

1. This Appeal, by way of oral and written submissions, took place on the 3rd May 2017 at the Tribunal's Hearing Centre, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF. The Appellants were represented by themselves with the Respondent being represented by Ms Sonia McIntyre and Mr Gareth Neill, Senior Valuer on behalf of Land & Property Services.
2. The Appellants are the owners of property being situate at 33 Newry Road, Newtownhamilton, Co Armagh, BT35 0AG. The Appellants' property is a large substantial property in a rural location comprising two storeys and with a GEA of 438m². The property is in an excellent state of repair benefitting from modern construction in or about 2007/2008. On the 27th May 2014, the property was first entered into the valuation list with a capital value of £390,000. The Appellants thereafter appealed to the Commissioner of Valuation on the grounds that the property was located in close proximity to an amenity site. At this stage, there was no mention of a wind turbine which had yet to be constructed.
3. In any event, the Commissioner of Valuation decided to reduce the unadjusted capital value to £380,000 but applied a 5% allowance to reflect the proximity of an amenity site. The adjusted capital value, therefore, became £360,000. The amenity site, known as Newtownhamilton Household Recycling Centre, is situate approximately 310 metres from the Appellants' property and the evidence given by the Appellants was that there was significant fly-tipping in the area. The Appellants relayed that they had made numerous complaints to the local Borough Council in respect of the fly-tipping but that the Council were unable to assist. In context, the Appellants indicated that the modus operandi was that persons arrive at the site, find it closed and, rather than returning on another day

whenever the site was open, took the opportunity to offload their waste and rubbish a short distance away from the amenity site. Invariably this resulted in dumping of unwanted goods and rubbish in the proximity of the Appellants' property. The Appellants gave evidence, which the Tribunal accepts, that this occurred frequently although it must be said that the witness on behalf of the Respondent, Ms McIntyre, indicated that, on the various occasions that she had attended on site, no fly-tipping was visible.

4. Thereafter, on the 16th November 2015, with the aforementioned wind turbine having been constructed, the Appellants made an application with the District Valuer seeking a reduction. The District Valuer reviewed the application but decided to make no change to the capital value. Thereafter, the Appellant appealed the District Valuer's decision and, rather unfortunately for the Appellants, not only was the 5% allowance in respect of the amenity site reviewed, the appeal in respect of the any wind turbine allowance also failed. The capital value indicated previously of £380,000 therefore stood as the relevant capital value. The decision was issued on the 15th December 2015, however, the Appellants did not appeal until the 15th February 2016. In their appeal notice the delay was explained on the grounds that the original form which the Appellants had received from the Northern Ireland Valuation Tribunal Centre was wrong. Having reviewed the matter carefully, the Tribunal is minded to apply its discretion pursuant to Rule 5(c) of the Valuation Tribunal Rules (Northern Ireland) 2007 to allow the Appellants to present their appeal. The grounds upon which the Tribunal is minded to exercise its discretion includes:
 - a) The fact that attempts were made by the Appellants to appeal within the specified time period;
 - b) The fact that no prejudice could be evidenced or occasioned to the Respondent.
 - c) The fact the Respondent did not object; and
 - d) That there were clear merits and matters of relevance to be determined by the Tribunal.

Grounds of Appeal

5. At the hearing before the Tribunal, the Appellants presented their evidence in a clear and cohesive fashion. The Appellants indicated that their grounds of appeal pertained to three factual issues, namely:
 - a) The location of the amenity site and the impact of fly-tipping.
 - b) What they perceived as a miscalculation in the gross external area of the property.

- c) The presence of a wind turbine and the effect on the value of their property.

Dealing with each seriatim.

a) Amenity Site

6. As set out above, the main complaint which the Appellants had in respect of the amenity site was the presence of fly-tipping. This was not, however, the only complaint and impact upon their environment which the Appellants had concerns with. The amenity site had been built on a landfill site which originally commenced operation in or around the 1950s. The concerns of the Appellants were that there was possible contamination on the site but that this had not been taken into account by LPS in ascertaining capital value. Evidence of the prospective contamination came in a document produced by the Northern Ireland Environment Agency in the context of a Planning Application pertaining to the wind turbine referred to above. In the response by NIEA, and more especially their Land and Resource Management Unit, dated the 6th January 2014, it was noted that:

“Based on the available information, the previous activities at this site may have caused the land to be affected by contamination. It is recommended that Planning Approval is withheld pending the submission agreement of additional information to identify and manage the risks.”

7. The Appellants’ case is that this uncertainty regarding the state of the landfill site (which is closer to the Appellants’ property than the amenity site – approximately 150 metres away) should have been considered by the LPS as a reduction in the capital value. It is necessary at this stage to set out the assumptions which LPS must work to in assessing Capital Value which are those contained Schedule 12, Paragraphs 9 to 15 of the Rates (Northern Ireland) Order 1977. Those assumptions may be summarised as follows:
- (i) That the property, if sold, was to be sold with vacant possession.
 - (ii) That title to the property is by way of Fee Simple or by way of long Lease.
 - (iii) That the property is sold free from any rent charge or other encumbrance.
 - (iv) That the property is in an average state of internal repair and fit-out, having regard to the age and character of the property and its location.
 - (v) That the property is in the same circumstances it would have been expected to have been in on the relevant date, defined as the 1st April 2007.

- (vi) That Development value is not to be taken into account.
 - (vii) That the property has all the necessary statutory consents.
8. No evidence was produced by the Appellants to evidence any prospective reduction in the capital value of the property and the fact that there might well be a reduction was not accepted by the Respondent. In circumstances where no clear threat has been ascertained (the reference by NIEA is to a possibility of contamination, rather than a certainty or probability) means that it would be wrong, having regard to the capital value assumptions referred to above, to consider this aspect of the Appellants' case as justifying a reduction in capital value. This ground of appeal is therefore rejected.
 9. However also in the context of the amenity site, this left the issue regarding fly-tipping. As aforementioned, the Tribunal accepts the Appellants' evidence that there is a problem with fly-tipping in the local area such as likely to affect the market value of the Appellants' property. Ms McIntyre, on behalf of LPS, sought valiantly to argue that there should be no reduction on the basis that other properties in the local area had not occasioned reductions by virtue of being located beside amenity sites. She was, however, able to identify a 10% reduction in respect of a property close to a landfill site at 44 Chapel Hill Road, Newry and another property which had a reduction of 7% beside a recycling plant. The ability to award a reduction arises out of a review of the comparables.
 10. Here the comparables which were identified by LPS at 64A Slatequarry Road, Cullyhanna; 21 Outleekan Road, Belleek; 6 Macullagh Road, Newtownhamilton and 60 Carrickrovaddy Road, Belleek were all properties of similar size and construction, doubtless reflecting the Planning Policy at the relevant time in the present area. Although these were situate some distance from the amenity site the Tribunal has no difficulty in accepting that fly-tipping would cause a reduction in capital value. The Tribunal assesses this reduction at circa 5% - 10% and is comforted in its decision by the original decision of LPS to apply an allowance of 5%.

b) Gross External Area

11. The Appellants' case in this particular instance was that an area included in the gross external area assessment by the valuer should not have been included. This area, which comprised an attic space above the garage is, according to the Appellants, a space never utilised by them and, as such, it was alleged that it was unfair that it should be considered. The Tribunal had the benefit of the oral evidence of the Appellants and photographs of the subject area. The room was plastered, painted and fitted with a wooden floor. The room is accessed

internally from the main body of the house and had a small balcony along with patio windows. It was unable to be accessed from the garage and there was no external means of access.

12. The Tribunal has no hesitation whatsoever in rejecting the Appellants' submissions on this particular point. It is clear that the area of a property which can be used as habitable space must be valued. This is clearly habitable space and the Appellants' submissions that it was simply intended to be used as a storage area and could be blocked up are not matters which the Tribunal should not take into consideration.

c) Wind Turbine

13. The Appellants produced a large body of documentation pertaining to wind turbines, wind farms and the effect of wind turbines and wind farms on individuals. Much of the evidence produced was entirely subjective, drawn as it was from various internet searches. What the Tribunal did however express an interest in was the decision of the Lincolnshire Valuation Tribunal dated the 17th July 2008 made by Mr D Shepherd in respect of Mr Julian Davis and Mrs Jane Davis. Whilst the decision is at best persuasive, it established that the presence of eight 2 megawatt turbines built approximately 930m away from the appeal dwellings justified a reduction in the relevant Council Tax Band.
14. Care must however be applied to simply applying a notion that, because there was a reduction in one case, then that reduction should be applied equally to the Appellants' case. Before the Tribunal, the Appellants were able to produce evidence of the visual impact of the wind turbine through video and photographic evidence but were wholly incapable of producing any evidence in respect to noise complaints. No noise measurements had been taken or procured by the Appellants and, in the circumstances, the Tribunal was left without any evidential basis to reach a conclusion on the impact of noise. The visual impact of the wind turbine was, however, able to be ascertained by the Tribunal and Ms McIntyre helpfully produced evidence of other properties where a reduction had been made due to the presence of a wind turbine. At 36 Drewhill, Dromara, the wind turbine was approximately 200 metres away from the subject property and the valuer responsible (Ms McIntyre) had been immediately aware of the noise in respect of said turbine. To that property a 10% allowance was granted. In respect of a property in Fermanagh, the wind turbine (which was part of a wind farm) was some 1050 metres from the subject property. There no reduction was applied. In two further cases at Ligford Road, Strabane, a property 265 metres away from a wind turbine was granted an allowance of 8% and in respect of 3

Dundooan Road, Coleraine, a property a distance of 300 metres away with a noise element was granted a capital allowance of 10%.

15. The Tribunal accepts, as a matter of fact, that the presence of a wind turbine some 500 metres away from the Appellants' subject property has a material impact on the capital value. The maximum reduction to be applied in respect of the presence of any wind turbine appears to be 10% and in the context of various decisions of this Tribunal pertaining to diminution in capital value because of environmental factors, the figure of 10% appears reasonable. In the circumstances, however, the failure of the Appellants to adduce any evidence as to noise and the distance of 500 metres which the turbine is situated from the subject property means that the capital allowance to be applied must be considered in the region of 5% - 7.5%.

Decision

16. For the reasons as set out in this decision, the Tribunal is convinced that the Appellants' appeal should be allowed. The range of possible capital reductions is relatively wide and the Tribunal must consider the cumulative effect of any reduction. Having considered the matter carefully, the Tribunal allows a 12.5% reduction in the capital value.

Signed Keith Gibson – Chair

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties - 25 May 2017