

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: NIVT 20/20

MRS AVRIL HALLEY- APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: FJ Farrelly Esq

Members: Mr Brian Reid FRICS and Ms Noreen Wright

Date of hearing: 29 November 2021

DECISION

The unanimous decision of the tribunal is that the Decision of the Commissioner of Valuation for Northern Ireland is upheld and the appellant's appeal is dismissed.

REASONS

1. The appellant is the owner and occupier of 46 Downshire Road, Belfast BT6 9JL. She has lived there for over 23 years. On 13 August 2020 she applied to the District Valuer for a reduction in her rates on the basis the value of her property had been reduced by her neighbour creating a nuisance. Her neighbour at number 44 who had placed a construction in their garden from which she believes they operate a beauty business. A valuation certificate was issued on 2 October 2020 making no change to the previous valuation of £220,000.
2. Ms Halley then appealed to the Commissioner of Valuation. This resulted in an inspection of her property on 17 November 2020 by a Ms Graham, a chartered surveyor, on behalf of the respondent. A further valuation certificate was issued on 17th November 2020 making no change to the valuation. She has appealed to the Valuation Tribunal and elected for a determination on the papers.

3. The tribunal has met in person at the Royal Courts of Justice. There was a presenting officer in earlier face-to-face appeal on behalf of the respondent, but they took no part in this appeal.
4. The appellant states the structure and activities of her neighbours intrudes upon her privacy, lowers the tone of the area and has caused an increase in traffic. She believes the nature of the business being run would deter purchasers of her property. She suggests her property's value may have been reduced by in or around 15% because of this.
5. For the appeal Ms Graham has prepared a submission entitled 'Presentation of Evidence.' There are photographs of the appellant's home showing that it is a semi-detached two-storey building with a driveway and rear garden. One of the photographs is a view from an upstairs room. From this the next-door neighbour's garden can be seen and a structure can be seen at the rear which appears to be almost the width of the garden. Both rear gardens appear to be relatively compact and the same shape and size.
6. When Ms Graham visited there was no evidence that the building was being used for commercial purposes and she did not see any issues with street parking. She had received no evidence to confirm the building was used for a commercial purpose. She did notice at number 10 Rosetta Road East an outbuilding extending to 8.67 m² had been converted into a hairdressing salon. None of the neighbouring properties had been awarded any reduction because of its presence. Furthermore, a double garage measuring 39 m² with the pitch roof had been constructed to the rear of number 48 Downshire Road. No reduction had been made in respect of the rates for number 46 A which was in close proximity to the structure. Photographs of the locations have been provided in the bundle.
7. Ms Graham was of the opinion that the presence of the building in her neighbour's property would not result in a reduction in value of the appellants property. The building was not a permanent construction, and she did not consider to be any more intrusive than a garden shed or garage. She made the point that there were no examples in the valuation list reflecting a reduction in value because of similar buildings. She concluded by stating the valuation was well supported by comparable properties. A list of comparators is provided in appendix 1.

8. The appellant takes issue with a number of the points in Ms Graham's report. She maintains that a business is being conducted from the premises and has provided additional photographs. She maintains the activities carried on do amount to a nuisance. She also submits that the construction is intended as a permanent structure. Regarding the comparators, she states the hairdressing salon referred to is not in an elevated position or directly looking into an adjoining property. Furthermore, the garage referred to has no windows looking onto the property at the rear. It was also constructed before the neighbouring properties were built.

Consideration

9. The creation of a nuisance can lead to a diminution of property value despite no physical damage having been suffered. This can cover for instance to a loss of amenity or enjoyment caused by noise or odour. For instance, in one reported decision a rail company was required to compensate homeowners for not controlling Japanese knotweed on its premises. By the same principle a properties rateable valuation can be reduced where there has been a diminution of value because of nuisance in an adjoining property. (see Raymond v Young Court of Appeal 2015.)
10. We are assisted by the photographs provided. The appellant objects to the construction being described as a shed. In the Collins English dictionary, a shed is described as a small building used for storing things such as garden tools. This would accord with the most common notion of a shed. However, the term can also be used in other contexts, suggesting a larger site structure such as a railway shed. However, we take the appellant's point and find that in the circumstance to describe the structure as a shed plays down its significance. For convenience we will continue to refer to it simply as a structure.
11. The next issue relates to its permanence. Again, going back to dictionary definitions permanent can include something not expected to change in status, condition or place. Again, from looking at the photographs the structure strikes us as not something intended to be short-term or temporary. The photographs indicate it is on a raised plinth and there are handrails leading to it. There appear to be fittings inside. It appears to be constructed of wood and glass with a flat roof. It appears to be a structure which will have a limited lifespan compared say for

instance to a dwelling house built out of brick. Nevertheless, for practical purposes it appears to have been placed there with a view to it remaining for some time. Consequently, for our purposes we treat it as a permanent structure.

12. The appellant is not aware of any planning application made in respect of the structure. The respondent is not aware of it being used for any commercial purpose. However, the structure has been placed there for a purpose. We have limited information about the activities carried on but one of the photographs appears to show a swivel chair. The appellant has also referred to being able to partially see into the structure and has observed what she describes as 'customers' on a couch. There appears to be activity at the weekends and in the evenings rather than daytime. It was our view the appellant would be aware of activity in the neighbouring property. Bearing in mind her comments and the structure we would accept her evidence there is some activity taking place beyond what would be expected of a domestic structure. Householders now are constructing outbuildings to their property where they can retire to for some peace and reflection or suchlike. However, we accept that more likely than not this is not a structure for personal use only. Notwithstanding the absence of any planning permission, it seems likely some commercial activity is taking place.

13. It is understandable that the appellant is concerned about a structure at the rear of a neighbour's garden which fronts onto the back of her house. It has a full-length window and full-length glass door with apparently a full-length window to the side facing the appellant's garden. In the dark evenings the enjoyment of her own home may be diminished by light from the structure. The structure is elevated in that it is built on a plinth and there are steps up to it. However, we have some difficulty in seeing how the occupants of the structure can be said to be looking into the appellants property. From her upstairs window she would have a view into the structure. However, we cannot see how individuals in the structure could see much of her bedroom. Nevertheless, there has been some diminution in her privacy. For instance, she might be conscious at night when the curtains were not drawn. The window at the corner of the structure appears to face the appellant's garden but is fronting onto her garden fence. It is difficult to see how the view from that window would look into her home.

14. We note from the photograph showing the location of the salon referred to at 10 Rosetta Road East that a number of nondomestic structures have been erected. We acknowledge the distinctions the appellant makes with these but nevertheless they evidence other usage which has gone on over the years.
15. We do not see any evidence of likely traffic disruption. The structure created is fairly compact and we cannot imagine a great number of individuals using it at the one time. The photograph from the air does not indicate this is an area of heavy traffic.

Conclusions

16. We appreciate the appellant's annoyance and concern over the structure and the fact she was not consulted by her neighbour. We do not have a date as to when it was installed but from the chronology given by the applications it would appear to have been in or around early 2020.
17. We bear in mind comments made by the appellant and also those of Ms Graham and the photographs made available. We are influenced by the fact that at various locations there are other structures and there has been no reduction in rates valuation because of them. We appreciate however there are distinctions.
18. We have limited information about the scale and nature of the business carried on in the structure. We acknowledge some diminution of the appellant's privacy. However, looking at the totality of the available evidence we do not find it established that it constitutes a significant nuisance likely to detract from the value of the appellant's property. There is no evidence for instance of the City Council being engaged because of noise or the police being summoned because of behaviour, activities or parking. No doubt our decision will be a disappointment to the appellant, but we do not find the evidence of such to justify a reduction in her valuation.
19. The appellant's grievance relates to the structure. Historically she has not challenged the valuation on her property. She refers to a neighbour having an identical house with the same valuation. If the structure were not present then she appears to have no grievance with the value placed upon it. We find the other comparators referred to by the respondent at appendix 1 to be fair and reasonable.

Chairman: F J Farrelly

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 17 May 2022