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

Case Ref No NIVT 15/19

BETWEEN:

LORRAINE JONES - Appellant

and

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - Respondent

Northern Ireland Valuation Tribunal

Chairman: Mr Keith Gibson B.L.

Members: Mr Chris Kenton FRICS and Ms Noreen Wright

Date of hearing: 26th August 2020

DECISION

Introduction

1. This is an appeal made pursuant to the statutory provisions contained in the Rates (Northern Ireland) Order 1977, as amended (hereinafter the 'Rates Order'), in respect of the capital valuation of the Appellant's property situate at 4 Melmore Drive, Derriaghy, BT17 9HT. The appeal itself was heard by way of written submissions with the Tribunal considering the matter by way of Sightlink on the 26th August 2020.

2. The property was entered into the valuation list on the 25th June 2019 at an assessed capital value of £195,000. Pausing here, the first point of note is that whilst the property was entered into the valuation list on the 25th June 2019 that is not the relevant date for the purposes of valuation. The relevant capital valuation date is the 1st January 2005 (see Schedule 12, paragraph 7(4) of the Rates Order).

3. The other point in time which is often referenced in the context of these appeals is the 1st April 2007 which is the date upon which the valuation lists for domestic properties became operative. What this means, in practice, is that for the purposes of any appeal before this Tribunal, rather nebulously, the Tribunal can only consider whether or not the capital valuation was correct as of the 1st January 2005.

4. Self-evidently, this can cause a number of problems both for homeowners and valuers alike. The most obvious practical difficulty is in respect of properties which are built or constructed or substantially renovated post the 1st January 2005. In that instance the valuer, using his or her skill and expertise, must try and assess the value of the new property with reference to similar properties already built and valued earlier (those similar properties are often referred to in valuation term as "the comparables").

5. For homeowners, they face two significant problems; one is an evidential problem; the other, a legal one (what is known as the 'tone of the list' statutory presumption). In respect of the evidential problem, homeowners have to seek to establish to the satisfaction of the Tribunal (and the onus and burden is on them as Appellants) that other properties sold or agreed for sale at the relevant time (the 1st January 2005) demonstrate that their 1st January 2005 valuation was wrong. Gathering that evidence is often very difficult, even for professional valuers.

6. The second difficulty faced by Appellants is that contained at paragraph 7 of Schedule 12 to the Rates Order which states, in a fine example of legalese;

   "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 hereditaments whose capital value has been revised."

7. This is what valuers know as the "*tone of the list"* or the "*tone of the comparables*". What this means in practice is that if within a relatively short period of time in a particular area (which in an urban setting, might well stretch only to one street, but in a rural setting may stretch to many miles) there are no or limited challenges to a number of valuations or, if challenges are abandoned or ultimately unsuccessful, then a point can be reached within a relatively short space of time although it would have to be said that a reliable tone of the list for the hereditaments (basically the buildings) in a location or category has been settled - see **A-Wear Limited –v- Commissioner of Valuation VR/3/2001**.

8. Whilst the presumption, as it pertains to the tone of the list, is not to be followed slavishly, if it can be established to the Tribunal's satisfaction that the tone has settled and has been settled for a considerable period of time (measured in years not months) then the prospects of displacing the presumption are significantly diminished.

The Appellant's Appeal

9. The starting point in valuing any property for the purposes of the Rates Order is a number of assumptions which the Valuer and indeed all parties to the appeal must make in respect of the subject property. They are contained in Schedule 12, paragraphs 9 – 15 of the Rates (Northern Ireland) Order 1977 and may be summarised as follows:

   (i) That the property, if sold, was to be sold with vacant possession (i.e. no sitting tenants or difficulty in obtaining possession).
   (ii) That title to the property is by way of Fee Simple or by way of long Lease (i.e. that the value to the property is not diminished by the fact that the title is in some way defective).
   (iii) That the property is sold free from any rent charge or other encumbrance (again that the title is not diminished in value by some sort of obligation on the owner).
   (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 (this is more

nuanced qualification – if a property has a serious defect, which is something distinct from similar properties of similar age and character then the assumption can be displaced).

(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 (i.e. that there has been no material change in the property from the 1st January 2005 to the 1st April 2007).

(vi) That Development value is not to be taken into account (i.e. planning hope is to be ignored).

10. What this means in practice is that both the Valuer on behalf of the Respondent and indeed the Tribunal make a number of assumptions about all properties in the valuation list in an attempt to ensure conformity. Those assumptions can however be displaced.

11. The Appellant put forward a number of grounds for appeal including:

a) A relevant comparable which she claimed supported a reduction (12 Redwood Dale).
b) The fact that her property allegedly suffered from a range of various nuisances.

12. The property itself has a gross external area of 119.8m² and an integral garage of approximately 39.3m². It is a detached bungalow which was constructed in or about 1955 and located in the Melmore Drive in Dunmurry. In the context of the Tribunal's aforementioned comments on the tone of the list, it is important to note that Melmore Drive comprises five dwellings which are all similar in age, character and type.

13. The comparable which the Appellant referred to was one located at 12 Redwood Dale which was constructed after 1990 and had a gross external area of 128.3m². Ab initio, the Tribunal rejected it as a comparable on the basis that it was of a different type, being a terraced house as opposed to a bungalow. It was located 0.7 miles away (in the context of the other properties in Melmore Drive, it was not sufficiently close).

14. Pausing here, comparable evidence is at the heart of most, if not all, valuation exercises. The principles of comparable evidence which was helpfully identified by Tribunal Member Mr Kenton FRICS, are that in compiling comparable evidence the compiler should ensure that the list of comparables is:

1. Comprehensive (ideally a number of comparables rather than a single transaction or event).
2. Physically very similar (ideally identical to the property being valued).
3. Timeous, i.e. of the relevant time. Quite obviously, if a valuer is valuing a property for the purpose of private treaty sale today then property sales within the last number of months are considerably more relevant than property sales three to four years ago. As set out above, the relevant time is the 1st January 2005 for the purposes of this appeal.
4. Sales or transfers at an arm's length transaction, i.e. property sales at public auction or properly marketed private treaty sales. By way of example, sales to family or friends or sales that have some added incentive or distorting effect are less relevant.
5. Verifiable (the most easy and obvious example is sales which are recorded in Land Registry, where the amount paid is recorded).

15. It goes without saying that it will be extremely rare that one finds a comparable which is an exact match for the property to be valued. There can be differences in relation to (and this list is not meant to be an exclusive list) location, aspect, size, construction, efficiency, tenure and use. Comparables can only ever therefore be guides to determining valuation which is why, in the present context, the fact that the Appellant's property was one of five properties all built at roughly the same time is of such importance.

16. Mr McGennity, on behalf of the Respondent, provided, amongst others, two such comparables, namely:

    a) 1 Melmore Drive which had a similar habitable space of 112m² but a smaller garage of 19m² as opposed to the Appellant's property which had a garage of 39.3m².
    b) 3 Melmore Drive which again was of a similar size of 113m² and again with a smaller garage.

17. Both properties at 1 and 3 Melmore Drive were valued at £190,000 as opposed to the Appellant's valuation of £195,000. Mr McGennity also identified a property at 18 Fairview Park, Derriaghy which was slightly larger but of a similar type of construction. Given the existence of 1 and 3 Melmore Drive, the Tribunal has not seen the need to rely upon this particular property as a comparable.

Tribunal's Decision

18. Insofar as the Appellant has put forward a property which seeks to challenge the valuation in respect of comparable evidence, this ground of the appeal fails. The Tribunal has no difficulty rejecting the evidential weight or value in the comparable put forward by the Appellant for reasons of size and location. The much better comparables are, as aforementioned, the ones at 1 and 3 Melmore Drive.

19. This then leaves the remaining grounds for appeal in respect of, what might be termed, the nuisance element, namely the fact that her property is sandwiched between two commercial sites; one is a factory which, allegedly, produces steam and sulphur and the other a car mechanic workshop (nuisance ground 1). There is then the issue of the fact the property is on the same road as Dunmurry dump and the main road is frequently blocked (nuisance ground 2).

20. First and foremost, there is absolutely no doubt that, in principle, the Tribunal has the power to vary downward a valuation because of a nuisance. Difficult issues can arise when the nuisance is temporary - see, for example, **Stafford –v- Commissioner of Valuation** [2011] 6 BNIL 76 in Northern Ireland and **Shepherd (VO)'s Appeal** [1978] 1 GLR 180 in England and Wales where the Lands Tribunal in England and Wales held that only if a nuisance existed beyond twelve months would it be considered to be of sufficient duration so as to effect valuation.

21. The NIVT, like any other Tribunal or Court depends almost entirely on the evidence presented or produced before it. Here the Appellant stated blandly that there was a nuisance caused by steam and sulphur and an unspecified nuisance coming from the car mechanic workshop in the next street, along with traffic issues. No reports were produced either to 1) establish the nature and severity of the nuisance or 2) the effect it

may have on the value of the property. The Appellant herself did not give evidence and so the Tribunal was left with, what were effectively, two allegations of nuisance without any supporting evidence.

22. For the Tribunal to make a finding of fact on the basis of what was produced by the Appellant would be perverse. All that the Appellant effectively did was provide submissions and, in the absence of evidence, the Tribunal has no option to reject this aspect of her appeal.

Conclusion

23. It is therefore the unanimous decision of the Tribunal that this appeal be refused.

Signed: Mr Keith Gibson – Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 17 September 2020