

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: 12/13

PATRICK BRENDAN KELLY - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

**DECISION OF PRESIDENT OF THE NORTHERN IRELAND
VALUATION TRIBUNAL ON APPLICATION FOR LEAVE TO
APPEAL TO THE LANDS TRIBUNAL**

I do not grant leave to the appellant to appeal to the Lands Tribunal for the reasons set out below.

REASONS

Introduction

1. The appellant, by Notice of Appeal received by the Office of the Tribunal on 18 June 2013, appealed against the decision of the Commissioner of Valuation in a Commissioner's Valuation Certificate dated and issued 21 May 2013 in respect of the valuation of a hereditament situated at Number 25 Tullyglush Road, Shantavny Scotch, Seskilgreen, Dungannon BT70 2BZ ("the subject property") whereby the domestic capital value (non-exempt) was determined at a figure of £90,000.
2. The matter was dealt with at an oral hearing before the tribunal on 27 August 2013. By decision with reasons promulgated by the tribunal on 20 September 2013 ("the Decision") the tribunal's unanimous determination as set forth in the Decision was that the appeal should be dismissed, for the reasons stated.
3. The appellant has now requested leave to appeal. By letter sent on his behalf by his representative, Councillor Anthony McGonnell B.A., P.G.C.E., M.A., and dated 26 September 2013 ("the appeal letter") this request for leave to appeal has been made.

4. The matter has been accordingly referred to me as President of the Northern Ireland Valuation Tribunal to determine whether or not to grant leave to appeal to the Lands Tribunal under the statutory provisions which are mentioned below.
5. The appeal letter sets forth particulars of the grounds upon which such a request for leave to appeal is made. These grounds are as follows:-
 - (a) In the Decision the tribunal was critical of the fact that no documentary evidence was submitted.
 - (b) The appellant was not aware of the necessity for this.
 - (c) The appellant has, in his possession, documentation which will sustain his argument regarding unfitness and dereliction in respect of the subject property.
 - (d) Such documentation and costings will be made available at a future appeal.

The Applicable Law

6. The statutory provisions relevant to my determination in the matter are to be found in the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”) and in the Lands Tribunal (Amendment) Rules (Northern Ireland) 2007 (“the Lands Tribunal Rules 2007”). These are as follows (in respect of the 2006 Order): -

“Appeal from decision or direction of Valuation Tribunal

54A. —(1) Any person who is aggrieved by any decision or direction of the Valuation Tribunal under Article.... 54(2) may, with the leave of—

- (a) the Lands Tribunal; or
- (b) the President of the Valuation Tribunal,

appeal to the Lands Tribunal. “

These are as follows (in respect of the Lands Tribunal Rules 2007): -

“ 4. In rule A1—

- (a) -
- (b) at the end there shall be added the following paragraphs—

“(4) an appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal shall be instituted by serving on the registrar a notice of appeal in accordance with Form AC within 28 days from the date of the grant of leave of appeal by the President of the Valuation Tribunal.

(5) A notice of appeal under paragraph (4) shall be accompanied by—

- (a) a copy of the decision or direction of the Valuation Tribunal against which the appeal is made; and
- (b) a copy of the decision of the President of the Valuation Tribunal granting leave to appeal.

(6) An application for leave to appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal may be made to the

The Determination

7. I begin by indicating that the function of the tribunal includes the receipt of any oral and documentary evidence which any appellant or respondent to an appeal may wish to put forward for consideration by the tribunal in any appeal. The tribunal's task is properly to assess any relevant evidence and to draw conclusions of fact relevant to any issues requiring to be determined. To these facts the tribunal then is tasked with the application of the relevant law in reaching a reasoned determination.
8. My function, as President of the Northern Ireland Valuation Tribunal, in identifying proper reasons for the granting of leave to appeal, includes an assessment of whether or not any party was afforded a fair and proper hearing and whether or not the tribunal properly took account of relevant evidence adduced, made such proper material findings of fact such as were required to be made, and properly applied the relevant law to the determined facts. The grounds upon which leave is now sought do not endeavour to challenge any of the forgoing issues. Instead, the grounds suggest that the appellant has in his possession certain documentary evidence which was not at any time placed before the tribunal. As this documentary evidence was not placed before the tribunal, any such was not at any time considered by the tribunal. Accordingly, any such evidence could not have been taken into account in any manner by the tribunal in making the Decision. The appellant now seeks to rely upon such evidence in making a subsequent appeal against the Decision.
9. Under these circumstances, it is noted that the appellant does not seek in any manner to challenge the Decision concerning tribunal's function and the tribunal's conduct of the matter in the way the hearing was conducted by the tribunal and the manner in which the relevant law was applied to the determined facts in the making of the Decision. Article 54A of the 2006 Order requires that the appellant be aggrieved by any Decision made under Article 54(2). The appellant, in seeking leave, has not stated that he is aggrieved by the tribunal's Decision made in respect of evidence received, but rather he alludes to potential evidence that was never placed before the tribunal. This cannot form any proper basis for the granting of leave to appeal as the function of the system of appeals is not to afford to any party a second opportunity to present a case on the basis of enhanced or revised evidence. The statutory review procedure does permit a review to be conducted on the basis that new evidence, to which any decision related, had become available since the conclusion of the proceedings and if its existence could not reasonably have been known or foreseen before then. However, that is inapplicable under these circumstances. I thus cannot discern from the appeal letter any proper grounds satisfactorily made out on behalf of the appellant for the granting of leave to appeal to the Lands Tribunal.
10. It is open to the appellant, under the statutory provisions mentioned above, if refused leave by the President of the Northern Ireland Valuation Tribunal, to seek leave from the Lands Tribunal.

11. Under the forgoing circumstances and for these reasons, I do not grant leave to the appellant to appeal to the Lands Tribunal.

Dated this 8th day of October 2013

**James V Leonard, President
Northern Ireland Valuation Tribunal**