

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: 46/12

MICHAEL GRANT - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Tim Hopkins FRICS and Ms Angela Matthews

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

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant indicated in his appeal that he was content for the appeal to be disposed of by written representations and accordingly there were no appearances at the hearing of the matter. The matter was dealt with under the applicable procedure by the tribunal on 21 February 2013.
2. The appellant, by Notice of Appeal received by the Office of the Tribunal on 3 September, appealed against the decision of the Commissioner of Valuation by Certificate of Valuation dated 4 September 2012 in respect of the valuation of a

hereditament situated at 14 Dunwish Road, Calkill, Omagh BT78 5PH (“the property”)

The Law

3.1 The primary statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”) and as applicable by subsequent legislation. The tribunal, as is customary, does not intend in this decision fully to set out the statutory provisions of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, for the reason that these provisions have been fully set out in many decisions of this tribunal, which are readily available. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter.

3.2 The statutory provisions in respect of completion notices are to be found in the 1977 Order, as amended, at Article 25B and Schedule 8B to the 1977 Order. Article 25B of the 1977 Order, as amended, provides in respect of new buildings and completion days and completion notices, as follows:-

25B.—(1) Schedule 8B (which makes provision with respect to the determination of a day as the completion day in relation to a new building) shall have effect.

(2) Where—

(a) a completion notice is served under Schedule 8B; and

(b) the building to which the notice relates is not completed on or before the relevant day, then for the purposes of this Order the building shall be deemed to be completed on that day.

(3) For the purposes of paragraph (2) the relevant day in relation to a completion notice is—

(a) where an appeal against the notice is brought under paragraph 4 of Schedule 8B, the day determined under that Schedule as the completion day in relation to the building to which the notice relates; and

(b) where no appeal against the notice is brought under that paragraph, the day stated in the notice.

(4) Where—

(a) a day is determined under Schedule 8B as the completion day in relation to a new building, and

(b) the building is not occupied on that day,

it shall be deemed for the purposes of Article 25A to become unoccupied on that day.

(5) Where—

(a) a day is determined under Schedule 8B as the completion day in relation to a new building, and

(b) the building is one produced by the structural alteration of an existing building,

with the hereditament which comprised the existing building shall be deemed for the purposes of Article 25A to have ceased to exist, and to have been omitted from the list, on that day.

(6) In this Article—

(a) “building” includes part of a building; and

(b) references to a new building include references to a building produced by the structural alteration of an existing building where the existing building is comprised in a hereditament which, by virtue of the alteration, becomes, or becomes part of, a different hereditament or different hereditaments.

Schedule 8B of the 1977 Order provides, in respect of completion notices, as follows: -.

Completion notices

1.—(1) If it appears to the Department that the work remaining to be done on a new building is such that the building can reasonably be expected to be completed within three months, the Department may serve a completion notice on the person entitled to possession of the building.

(2) If it appears to the Department that a new building has been completed the Department may serve a completion notice on the person entitled to possession of the building.

(3) The Department may withdraw a completion notice by serving on the person entitled to possession of the building a subsequent completion notice.

(4) Where an appeal under paragraph 4 has been brought against a completion notice, the power conferred by sub-paragraph (3) shall only be exercisable with the consent in writing of the person entitled to possession of the building to which the notice relates.

(5) The power conferred by sub-paragraph (3) shall cease to be exercisable in relation to a completion notice once a day has been determined under this Schedule as the completion day in relation to the building to which the notice relates.

(6) Except as provided by an order made by the Department, the Department shall not serve a completion notice if it appears to the Department that the building is, or when next in use will be, used wholly for the purposes of a private dwelling.

(7) The Department shall not make an order under sub-paragraph (6) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(8) An order under sub-paragraph (6) may contain such incidental, supplemental and transitional provisions as the Department considers necessary or expedient, including provisions modifying this Schedule.

(9) The Department shall not serve a completion notice in relation to a building of a prescribed class.

3.3 In respect of the above-mentioned provisions of Schedule 8B (6) of the 1977 Order and the rating of unoccupied domestic property, the statutory position prior to 1 October 2011 was that Article 25A of the 1977 Order, prescribed that rates were payable on unoccupied properties that fell within a class prescribed by Regulations. It is not necessary for the purposes of this decision to set out the statutory provisions in full. The Non-Domestic Rating (Unoccupied Hereditaments) Regulations (Northern

Ireland) 2007 as amended (“the 2007 Regulations”) prescribed a class of property consisting of all non-domestic buildings or parts of buildings, except those listed in the Schedule to the 2007 Regulations. The Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 (“the 2011 Regulations”) revoked and replaced the 2007 Regulations. The effect of the 2011 Regulations is that, from 1 October 2011, domestic buildings and parts of buildings as well as non-domestic buildings or parts of buildings for the purposes of Article 25A of the 1977 Order became subject to rating, with certain statutory exceptions which are set forth in the Schedule to the 2011 Regulations. In summary, Article 25A and Schedule 8A of the 1977 Order, when read with the 2011 Regulations, prescribe that rates are payable on unoccupied domestic property at the same level as if the property were to be occupied.

The Evidence and Facts

4. The tribunal heard no oral evidence as this was an appeal disposed of by written representations. The tribunal had before it the appellant’s Notice of Appeal to the tribunal and the following:-
 - 4.1 The Commissioner's Decision by Valuation Certificate dated 4 September 2012.
 - 4.2 The document dated 8 January 2013 entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Mr Patrick Quigley MRICS and submitted in evidence to the tribunal for the purposes of hearing.
 - 4.3 Any relevant correspondence between the tribunal and the parties.
5. The property consists of a dwellinghouse situated at 14 Dunwish Road, Calkill, Omagh BT78 5PH. The appellant is understood to be the ratepayer. The property is a detached two-storey house, constructed circa 2010, of traditional design with block cavity construction walls, with plaster render and a pitched slate roof. The property has a gross external area (“GEA”) of 288.00m² and has a garage of GEA 34.40m². The property was further described in the Presentation of Evidence report as having uPVC double glazed windows throughout, connected mains water, mains electricity and septic tank sewerage system, and with full central heating (oil). The accommodation comprises two reception rooms on the ground floor, together with a

kitchen and one bedroom and on the first floor there are three bedrooms and one bathroom. The capital value under appeal was assessed, on the statutory basis, as at 1 January 2005 (that being the antecedent valuation date, or “AVD”) at a figure of £225,000. The brief history of the matter is that a completion notice was served on the property on 23 March 2012 (under the above statutory provisions); the property was on 22 June 2012 entered into the capital valuation list at £225,000; and on 30 July 2012 the case was closed, with the capital valuation figure being affirmed as correct by the Commissioner in the Commissioner's decision by Valuation Certificate dated 4 September 2012.

6. The respondent's submission to the tribunal is that in arriving at the capital value assessment regard was had to the statutory basis of valuation and thus regard was had to the capital values in the valuation list of comparable hereditaments in the same state and circumstances as the subject property. These “comparables” are set out in a schedule to the Presentation of Evidence, with further particulars given therein in respect of these comparables, including photographs of the comparables. There are five comparables in addition to the property. The respondent's submitted comparables all have mains water and electricity and full central heating and all are of comparatively recent construction and are located in rural areas to the west and north of Omagh. These comparables, with stated GEA values for both dwellinghouse and (if applicable) garage, number of bedrooms, existence of a septic tank or mains sewerage, and with ascribed capital values (presumed to be unchallenged) are as follows:-

- The subject property at 14 Dunwish Road, Calkill, Omagh BT78 5PH, (particulars as above stated) (£225,000);
- 194 Tamlaght Road, Ballygowan, Omagh BT78 5JS, GEA 286m², (no garage) (£215,000), 4 bedrooms, septic tank;
- 19 Lisnagirr Road, Lisnagirr, Omagh BT78 5NT, GEA 285m², (no garage), 5 bedrooms, septic tank (£215,000, unadjusted CV);
- 5 Bellview, Tattraconnaghty, Omagh BT78 5SD, GEA 292.50m², Garage GEA 69.90m², 4 bedrooms, mains sewerage (£235,000);
- 8 Bracken Road, Ballygowan, Omagh BT78 5JU, GEA 293.20m², Garage GEA 89.20 m², 4 bedrooms, septic tank (£230,000); and

- 115 Claragh Road, Cloghob Lower, Omagh BT78 5QB, GEA 294.40m², Garage GEA 77.90m² , 5 bedrooms, septic tank (£235,000).

A copy of the Commissioner's Presentation of Evidence has been provided to the appellant. The appellant has not responded any further thereto by making any additional submissions to the tribunal to add to the points contained in the Notice of Appeal.

THE SUBMISSIONS

7. The appellant has made the following points in the appeal submissions:-
 - 7.1. "My independent estate agent's valuation of No.14 Dunwish Road is £135,000"
 - 7.2. "Location to local amenities is 4 miles"
 - 7.3. "No. 14 is isolated from the main tarred road and is only accessed by a rough stones lane - not serviced by the local council"
 - 7.4. "No bin collections, no street lighting – no bus route – no main sewers and no services from the local council."
8. For the respondent, the forgoing issues raised by the appellant have been addressed and responded to in the Presentation of Evidence. Firstly, the approach to the assessment has been explained in the context of the property being vacant and the subject of a completion notice and the statutory provisions mentioned above have been briefly alluded to in the Presentation of Evidence. It is of note that the appellant's appeal does not either expressly or by implication take issue with the application of any of these above-mentioned statutory provisions to the property. Nonetheless these provisions are set out for completeness.
9. For the respondent, reference has been made to the applicable legislation and the general statutory basis upon which assessments of capital values are conducted with reference to the antecedent valuation date ("AVD"). Reference has been further made to the statutory requirement to have regard to the capital values of other (comparable) properties. In this matter the comparable properties are set out in the appendix to the respondent's Presentation of Evidence. It is submitted for the Commissioner that the comparables are all located in rural neighbourhoods and are

all somewhat distant from local amenities and services and that most of these comparables are served by septic tanks and are not on direct bus routes.

10. Regarding the other, principal, issue raised by the appellant, reference is made to appellant's statement that a local estate agent had valued the property at £135,000. However, the point is made on behalf of the Commissioner that current market value is of no relevance in assessing the valuation of the property for rating purposes in view of the statutory repair assumptions which must be made and the requirement to adhere to the antecedent valuation date ("AVD").

THE TRIBUNAL'S DECISION

11. Article 54 of the 1977 Order enables a person to appeal to this tribunal against the decision of the Commissioner regarding capital value. In this case the capital value has been assessed at AVD (1 January 2005) at a figure of £225,000. The appellant has not suggested in this appeal what the figure ought properly to be, in place of the assessed figure. Dealing firstly and briefly, for this is a well-established point but sometimes misunderstood by appellants, a contemporary (and indeed what might be an entirely accurate and expertly-assessed) valuation of any property under appeal, misunderstands the basis upon which capital values are assessed for domestic rating purposes under the statutory provisions mentioned above. This might seem to any appellant to be an entirely artificial concept, but it is nonetheless the statutory basis upon which such capital values are assessed for rating purposes. The valuation must be in reference to AVD. On behalf of the Commissioner it has been submitted that the valuation figure of £225,000 is fair and reasonable. The statutory basis for valuation has been referred to and especially reference has been made to Schedule 12 to the 1977 Order in arriving at that assessment. Schedule 12 provides that the assessment of capital value is made (based upon certain statutory assumptions) by assessing what the hereditament might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date (in this case AVD). In carrying out this exercise, one accordingly assesses the current situation and circumstances of any property and then, in effect, projects the capital valuation back to the deemed AVD value. There is no evidence that the valuation figure indicated by the appellant from the (unnamed and unidentified) estate agent was indeed projected back in notional terms to AVD

nor that it is probably anything other than a contemporary valuation figure. Regrettably, thus, any contemporary estate agent's value does not assist the tribunal in any manner. Accordingly the tribunal is obliged to attach no weight to that.

12. Regarding the remainder of the points made by the appellant, in the light of the respondent's submissions and the law, the tribunal carefully examined the evidence to be gained from the comparables in order to examine the application by the respondent of the statutory considerations to the assessed capital value of the subject property. The comparative method is employed by examining the capital values of comparable properties, these being ideally properties located in relatively close proximity to the subject property and having similar characteristics and circumstances. It is sufficient to say that this exercise appears to have been correctly and adequately conducted by the respondent.
13. There is a statutory presumption contained within the 1977 Order, Article 54(3), whereby any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown. As has been often mentioned, in order to succeed in an appeal the appellant must either successfully challenge and displace that statutory presumption of correctness or the Commissioner's decision on appeal, objectively viewed, must be seen by this tribunal to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the capital value to an appropriate figure. It has to be noted that the appellant, in this appeal, did not directly challenge any of the comparables identified in the presentation of evidence, but instead he relied upon the points mentioned above which relate to such matters as absence of amenity and remote location. Examining the comparables and the evidence to be taken from these, the capital values illustrate valuation information concerning properties which, from the evidence, also have such absence of amenity and are similarly circumstanced in location, which factors must properly to be taken as reflected in the (unchallenged) capital values ascribed to these comparables.
14. Noting all of the evidence as presented to the tribunal, the tribunal's conclusion is that the appellant has not placed before the tribunal sufficient evidence, information and argument to enable the statutory presumption of correctness in respect of the capital value assessment to be displaced.

15. The tribunal concludes that the Commissioner's assessment of capital value in respect of the subject property at a figure of £225,000 is not self-evidently or manifestly incorrect. Examining the evidence of the comparable properties and the other evidence and arguments put forward, the tribunal on balance sees nothing to permit this appeal to succeed. The Commissioner's Decision is accordingly upheld and the appellant's appeal is dismissed.

Mr James V Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: *20 March 2013*