

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 41/18

BETWEEN:

MONIKA MILCZAREK – 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 appeal touches upon property situate at 21 Legann Street, Belfast, BT14 8AR, a small terraced property built circa 1910 with a habitable space of 63m². The property now benefits from double glazing and full central heating and was entered into the valuation list on the 6th February 2019 with a capital value of £50,000.
2. 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 terms 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 Appellant appealed on a number of grounds including:
 - a) That the capital valuation was incorrect insofar as the house was purchased in 2005 for £25,000 (in the context of the capital valuation date this is obviously relevant).
 - b) The house was sold in 2019 for £42,000.
 - c) Based on the Nationwide House Price Index, the property at 21 Legann Street was worth £22,000 in 2005.
 - d) That the value of the property was affected by the condition of the house and safety of the neighbourhood including antisocial behaviour.
 - e) That at the time the property had a broken flat roof, mould, no proper flooring causing dampness and no hall or corridor.

10. In response (in summary form), LPS made the following points, namely:

- a) Not disputing that the property may have sold for £25,000 in 2005.
- b) Disputing the mathematical approach pointing out that it had been rejected in previous decisions of the NIVT.
- c) Not disputing the condition of the property, but pointing out that no evidence had been produced to substantiate the point made.
- d) That issues of crime and antisocial behaviour etc. were difficult to assess objectively. It would, in any event, be part of an assessment of the capital values generally.

The LPS also pointed to a number of comparables, namely:

- i. 15 Legann Street having a habitable space of 65m² and a capital value of £50,000.
- ii. 19 Legann Street having a habitable space of 63m² and a capital value of £50,000 (identical, seemingly, in every way to the subject property).
- iii. 8 Legann Street having a habitable space of 62m² and a capital value of £50,000.

11. To that list, the Tribunal also considered number 23 Legann Street, a property some 80m² with a capital value of £60,000, physically larger than the subject property, a point reflected in its increased capital value.

Consideration and Decision

12. 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).

13. 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.
14. The problems faced by the Appellant in this appeal were almost exclusively evidential. Because the matter was heard on the basis of the written evidence, the Tribunal had no opportunity to make direct enquiries of the Appellant. In respect of the sale in 2005, quite obviously if the property sold for the sum of £25,000 then that would have a material bearing on the Tribunal's consideration of her appeal. Actual evidence of market value is of course, subject to a number of caveats, better than any comparable, because it is direct sales evidence of the capital value of the property.
15. Unfortunately because of the way the case was presented, the Tribunal had absolutely no idea of whether or not the sale was by a public auction or a sale by private treaty or the circumstances behind the sale. It is not known whether the sale was at arm's length for example and so its evidential value must be treated with extreme caution. If there had have been clear and compelling evidence of the sale then this may well have influenced the Tribunal, but there was not.
16. A similar position arises in respect of the state and condition of the property. Whilst it is of course true to say that there is a statutory assumption, the lack of direct evidence also severely hampered the Tribunal when considering the Appellant's next point which was to the effect that the internal condition of the property was poor. As set out above, at para 12(iv) the assumption which is made in any valuation is to the effect that the building is in an average state of internal repair and fit out having regard to the age and character of the building and its locality.
17. The Tribunal accepts that this assumption can be displaced - see, for example, **Stirling –v- Commissioner of Valuation** [2012] 1 BNL 69 but the impact of the condition of the property must be such so as to substantially deprive the occupier of full use of the property. Finding (or giving) examples of when such an assumption might be properly rebutted is difficult because of the heavily caveated nature of the assumption; a 100 year old terraced house with a broken flat roof and mould would not be unusual but one with an absence of proper flooring and no hall or corridor might well have had the potential to rebut the assumption. Certainly if those defects had been present in a recently built four bedroomed detached property, the assumption would almost certainly have been displaced such as would lead to a reduction in the capital value.
18. However, the difficulty here, as aforementioned, is lack of evidence. The Tribunal had no extrinsic evidence such as photographs, whether contained in a contemporaneous sales brochure or otherwise, or a description of the property from the selling agent identifying the problems which the Appellant herself identified.
19. The onus and burden of proof in this appeal is on the Appellant and the unanimous conclusion of the Tribunal is that, rather unfortunately in the present circumstances, the Appellant has not done enough to discharge that burden.

20. As an aside and strictly obiter, it should be noted that a rebuttal of one of the statutory presumptions does not necessarily affect or impinge upon the tone of the list. Here, quite obviously, the tone of the list was settled with a capital value of the properties being in or around £50,000. The fact therefore that the property sold at approximately the same time as the material valuation date, whilst obviously important, is not of itself able to displace the tone. The starting point for the Tribunal would have been that the capital value of the property was £50,000 but that some reduction would have been made had it been satisfied as to the evidential burden in relation to the state and condition of the property.
21. The point about tone of the list does, however, resonate with the suggestion by the Appellant that some reduction should be made because of the social problems suffered in the neighbourhood. Again, there was an absolute paucity of evidence on this particular point but the establishment of the settled tone in or around £50,000 would have meant that, even if the Tribunal had been satisfied that the social conditions complained of were established, it would not have led to a reduction in the capital value.

Conclusion

22. The unanimous decision of the Tribunal therefore is that the appeal be dismissed.

Signed: Mr Keith Gibson – Chairman

Northern Ireland Valuation Tribunal

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