

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 25/21

Claire Magennis – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Francis J. Farrelly

Members: Timothy Hopkins and Robert McCann

Date of hearing: 18th October 2022

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 Law

2. The statutory provisions are to be found in the 1977 Order as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). The tribunal does not intend in this decision 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, as these provisions have been fully set out in earlier decisions of this tribunal. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in this matter.

The Tribunal's Decision

3. This is an unusual appeal. Normally, appellants are seeking to have the valuation of their property reduced or removed. In this appeal, Ms Magennis is seeking to have the rates of a neighbour's property increased. This is because she is hopeful that if the rates are increased the occupant will leave. This is referred to in an email sent by her representative Mr O'Brien on 9 May 2021.
4. The appellant's right to appeal in the circumstance was considered in an earlier application. Whilst the legislation is opaque, the conclusion was that she did have a right of appeal. The appeal was against a valuation certificate issued by the Commissioner for Valuation that the property was considered to be wholly domestic.

This was instigated by an application made by the appellant. The Commissioner for Valuation concluded that the previous valuation remained unchanged.

5. We concluded she had standing by reason of the reference in the legislation to 'a person aggrieved' and the fact that the Rates Order indicates that third parties have rights in relation to the decision of the Valuation Commissioner. Our more detailed consideration for this is contained in reasons already provided from a hearing on 28 September 2021.
6. The subject property is 1 Fern Close, Magherafelt. It is owned and occupied by a Mrs Mabel Kerr. There is no dispute as to its valuation for domestic purposes. The appellant is the owner of 7 Fern Drive. She has been represented by Mr O'Brien. It was indicated he is the husband of the appellant. He lives at 5 Mullaghboy Glen, Magherafelt which is not in immediate proximity to the subject property.
7. It is alleged by the appellant that Mrs Kerr is operating a hairdressing business from her property and in particular, that she uses a sunroom as a salon. It was contended that this has led to an increase in traffic and that values of properties in the area have been negatively affected.
8. As stated, the Commissioner for Valuation had concluded that the property was purely domestic.
9. As Ms Kerr was affected by the outcome of the appeal it was our view that she should be advised permitted to take part. As it turned out she did not wish involvement.
10. Following the appeal, a Mr McGrade, with experience of valuation with the respondent, drove to the subject property on 16 December 2020. He could see no evidence of any commercial use. This was consistent with the view of the District Valuer who reviewed the valuation following a telephone call from Mr O'Brien on 11 February 2020. The District Valuer concluded there was no evidence of any commercial use. Following the appellant's appeal, the matter was reviewed by the Commissioner of Valuation who concluded there was no evidence of any commercial use. The submission on behalf of the Commissioner for Valuation states that there is no separate outbuilding to the property and there is no designated business entrance nor any signage. There was no evidence of any congestion on the roadside. The conclusion was that if Mrs Kerr was operating as a hairdresser from her home, then the activity could be considered de minimis and did not justify an assessment for nondomestic rates.
11. The appellant, through Mr O'Brien, takes issue with this. He contends there usually are several vehicles parked on the road outside the premises belonging to customers. It is alleged two rooms are used as a waiting area and rooms have been fitted out with chairs and sinks and other hairdressing equipment.
12. Mr O'Brien took part in the hearing via video link as did Mr Jeffrey, presenting officer and Mr McGrade. Mr O'Brien maintained there were cars present on the premises on a daily basis. He stated that a number of years ago she had applied for planning

permission to operate as a hairdresser. He said she had been operating as a hairdresser for around 30 years and did not need to advertise. He indicated he had some documentation which supported his account which he would be submitting afterwards. Mr McGrath said that they had performed an outline search for planning permission but can see no evidence of any application. Furthermore, he saw no evidence of traffic disruption or signage.

13. Mr O'Brien did subsequently provide some documentation. We decided to consider this even though it should have been provided before the hearing. There is an extract from a statement taken by the police on 10 April 2018 from Ms Kerr. It states 'on 28 March 2018 I was in my hairdressing salon at Fern close, Magherafelt...' There is also an extract from two documents from the Department of the Environment, one of which refers to an application on 2 February 2012 for a proposed development of the subject properties. The proposal was for the provision of homeworking/hairdressing facilities within an existing sunroom. Although we do not have the entire document it appears to make a retrospective certification. The other extract appears to relate to the first and refers to the provision of homeworking/hairdressing facilities within the existing sunroom at 1 Fern Close.
14. We are satisfied from the documentation provided that Ms Kerr has been and continues to operate as a hairdresser from her home. We also find on the balance of probabilities that she has made some modifications to the sunroom to accommodate clients.
15. The respondent has concluded that the subject property is only liable for domestic rates. The submission on behalf of the respondent takes the view that the use of a part of a house for a commercial activity of the business purposes does not automatically necessitate a valuation for nondomestic rates. The respondent referred to the de minimis principle, particularly where the disputed area is also used as a habitable space.
16. It is our conclusion that whilst the appellant has demonstrated Mrs Kerr is carrying out a hairdressing business it falls within the concept of a de minimis activity. It has been suggested the hairdressing occurs primarily in a sunroom attached to the home. We have photographs of the exterior of the house. There is nothing on the face of it to indicate commercial activity. We appreciate that it would be difficult for the appellant to obtain evidence as to the interior of the property. However, there is no evidence to show as has been claimed that the sunroom has been kitted out for such activity or whether or not it can continue to be used as a sunroom.
17. Ms Kerr lives in the property. The property is constructed as a domestic dwelling. It is similar in appearance to adjoining properties. We have received no evidence to show a clear demarcation between the residential aspect of the property and the conduct of business. We have no evidence as to the scale of the building. There is no evidence that Ms Kerr has any employees.
18. Business rates are determined on what their rental value would be. There is no evidence to indicate a rental value as a hairdressing salon. The evidence indicates that the property is in fact Ms Kerr's home and that she carries out some work as a hairdresser on the property. It is our conclusion that these accords with the de

minimis view of the respondent and that no part can properly be considered as subject to commercial rates. Consequently, we agree with the respondent's decision.

Chairman: Francis J. Farrelly

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 01 February 2023