

**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: 82/12**

**FRANCIS MAGUIRE - APPELLANT**

**AND**

**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr James V Leonard, President**

**Members: Members: Mr Tim Hopkins FRICS and Ms Angela Matthews**

**Hearing: 27 August 2013, Belfast**

## **DECISION**

The unanimous decision of the tribunal is that the decision of the Commissioner in this appeal is not upheld and the tribunal determines that the capital value of the subject property in the capital valuation list is properly to be amended to a figure of £70,000, and the tribunal Orders the list to be amended accordingly.

### **REASONS**

#### **Introduction**

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, by Notice of Appeal received by the Office of the Tribunal on 27 February 2013, appealed against the decision of the Commissioner of Valuation in a Commissioner's Valuation Certificate dated 15 January 2013 in respect of the valuation of a hereditament situated at Number 8 Brookmount Road, Gortmore, Omagh, County Tyrone BT78 5HZ ("the subject property") whereby the domestic capital value was determined at a figure of £77,500.
2. The appellant requested an oral hearing of the appeal. The matter was listed for hearing at Belfast on 27 August 2013. At the hearing the appellant appeared and represented himself. The respondent was represented by Ms Karen McCullagh MRICS, together with Mr Michael McGrady MRICS.

#### **The Law**

3. The statutory provisions generally concerning the capital value issue 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 many readily-available earlier decisions of this tribunal. The appellant very helpfully, at the outset of the hearing, clarified that there was no issue to be determined as to whether the subject property ought to appear in the valuation list as a hereditament, but rather that the appeal concerned solely the issue of the proper capital valuation and the Commissioner’s Valuation Certificate, against which this appeal was made to the tribunal. That position differed from an earlier position adopted and the tribunal is grateful to the appellant for clarifying this matter. No issue turns upon the fact that the subject property is unoccupied. That is so as, on account of the Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011, rates are payable on an unoccupied domestic property at the same level as if that property were to be occupied.

### **The Evidence and Facts**

4. The tribunal noted the written and oral evidence and submissions. The tribunal had before it the appellant’s Notice of Appeal to the tribunal (Form 3) and various documents including the following:-

- The Commissioner’s Valuation Certificate dated 15 January 2013;
- A document entitled “Presentation of Evidence” prepared on behalf of the Commissioner by Ms Karen McCullagh MRICS and submitted to the tribunal for the purposes of the hearing;
- A document dated 25 February 2013 prepared by the appellant making a submission concerning the capital valuation of the subject property and submitted to the tribunal for the purposes of the hearing;
- A document dated 11 June 2013 prepared by the appellant making a commentary upon the respondent’s evidence and containing a submission concerning the capital valuation of the subject property, including photographs and a sketch plan, and submitted to the tribunal for the purposes of the hearing;
- A document dated 1 July 2013 prepared by the appellant making a commentary upon the respondent’s evidence and containing a submission concerning the capital valuation of the subject property, including photographs and a sketch plan, and submitted to the tribunal for the purposes of the hearing;
- A document dated 21 August 2013 prepared by the appellant making a submission concerning the capital valuation of the subject property and submitted to the tribunal for the purposes of the tribunal hearing;
- Copy of a Notice of Refusal of Application for a Certificate of Fitness dated 7 June 2012 from Omagh District Council, in respect of the subject property, made under the Private Tenancies (Northern Ireland) Order 2006;

- Copies of various emails and some administrative correspondence between the parties and the office of the tribunal.

5. The evidence in regard to the following determined facts was made available to the tribunal from the photographs and various documents and also was derived from the oral evidence. The appellant is the ratepayer. The subject property consists of a privately built two-storey dwellinghouse that is attached to a vacant shop premises. It was constructed in or around 1950. It is located in an urban area on the Brookmount Road, Gortmore, Omagh, which is on the outskirts of Omagh town centre. The immediate area appears to have more commercial usage than other parts of the Brookmount Road, located a little further from the town centre. At this location, Brookmount Road is a one-way street. There is no vehicle parking included within the curtilage of the subject property, but on-street parking to the frontage appears to be available, subject perhaps to town centre restrictions, although the tribunal is not fully certain of that latter from the evidence. The construction of the subject property is of brick/block, with a tiled roof. It has a measured gross external area ("GEA") of 118m<sup>2</sup>. There had been a dispute between the appellant and the respondent concerning the GEA measurement, but that has now been resolved. The appellant accepts, subject to one specific issue mentioned below (concerning what is properly to be included within the hereditament) that the GEA is accurately measured at 118 m<sup>2</sup> including a part of the structure specifically mentioned below. The accommodation comprises, on the ground floor, one reception room, a kitchen and one bedroom and, on the first floor, a bathroom and two bedrooms. The subject property was further described in the Presentation of Evidence report as having single glazed timber windows, an Economy 7 heating system (currently unconnected), and mains electricity, water (unconnected) and sewerage. As mentioned, it is currently unoccupied.
6. An internal and external inspection was carried out by Ms Karen McCullagh MRICS, on behalf of the respondent, on 19 December 2012. The following condition and circumstances issues were observed and reported by Ms McCullagh, with corresponding views expressed. The slate roofing on the main body of the subject property was unmaintained but remained in place and continued to serve purpose. The block structure was sound with no obvious signs of structural issues, although moisture marks were noted on the lower levels of the external façade. The subject property, cosmetically, appeared in a poor state, with unmaintained paintwork, fascia and rainwater goods. There was a corrugated iron roof on part of the building which failed to serve its purpose, allowing rainwater to penetrate into the interior fabric of the structure of the subject property, resulting in penetrating dampness in the hallway. Damp readings were high in the hall and in one bedroom. The internal walls and ceilings remained and the bathroom and kitchen facilities were in situ. Paintwork and wall coverings were coming away from the walls. This was stated to be due to lack of heat and ventilation, as well as the consequences of the failing tin roof on one side of the subject property. Mould was also noted throughout the subject property, but based on the fact that the subject property was not heated and ventilated, the opinion was that this was to be expected. The view expressed was that the internal issues were due to lack of maintenance and that these were issues that could be resolved at a reasonable cost. The currently unconnected services could be connected for a small fee, it was stated.
7. The rating history is that the subject property appears to have been initially included in the rating list at a capital value of £87,500. The original measurement was 108 m<sup>2</sup>

with a 10.00 m<sup>2</sup> outbuilding. The appellant had made an application to the District Valuer on 7 August 2012 on the basis that the subject property was not habitable. Inspection revealed that the outbuilding of 10 m<sup>2</sup> was now incorporated into the subject property, thereby increasing the GEA from 108 m<sup>2</sup> to 118 m<sup>2</sup>. The subject property was deemed capable of beneficial occupation. However, considering the poor external condition and the defective metal roof, the capital value was adjusted by a figure of £10,000, from £87,500 to £77,500.

## **THE SUBMISSIONS**

8. The appellant's case made in his written and oral submissions to the tribunal was that, on behalf of the respondent, it had been stated that the subject property was "*capable of beneficial occupation*" and that "*it could be rented out*". However the appellant had produced written evidence in the case from Omagh District Council. This consisted of a notice from the Council constituting a refusal of an application for a Certificate of Fitness, dated 7 June 2012, made under the Private Tenancies (Northern Ireland) Order 2006, Article 36 (5). This was submitted as being evidence that the Council was not satisfied that the subject property was fit for human habitation; the reasons for this had been listed in detail in that certificate. Furthermore, so the appellant's submission continued, the relevant provisions of the Building Regulations specified that the subject property was not fit for occupation. There were two rooms on the right-hand side upon entering the front door which had a corrugated metal roof. This area was 26 m<sup>2</sup>. This required to be demolished. This area was uninsulated, was constructed of one block walls and was not fit for purpose. The corrugated metal roof abutment to the gable wall was causing ingress of rain water along the entire length of the gable of the subject property. This was asserted to be not simply a question of condensation or lack of ventilation; this part of the subject property had to be condemned as unfit for human habitation. The respondent had stated that a reduction of 10% had been allowed in regard to the valuation of comparables dwellings. However, all of the dwellings presented as comparables in the matter were occupied and did not require significant investment to make them capable of habitation. The Building Regulations (Northern Ireland) 1994 (being those regulations relevant in 2004/2005) were applicable and there were significant breaches of these regulations, including regulations relating to resistance to groundwater and weather, fire safety and means of escape, and ventilation matters. The minimum works required to make the subject property capable of habitation were itemised and listed by the appellant and included: (1) the demolition and removal of the corrugated roof structure (at a sum of £9,000); (2) the reinstatement of the site boundaries after demolition (at a sum of £3,000); (3) the reinstatement of finishes to exposed gable after demolition (at a sum of £4,000); (4) the removal and replacement of the windows to comply with applicable Building Regulations to include ventilation and means of escape and rescue (at a sum of £5,000); and (5) the carrying out of works listed by the Council to render the subject property fit for habitation (at a sum of £9,500). All of these came to a total sum of £30,500. Taking all these matters into consideration, the appellant's submission was that the capital value ought to be reduced to reflect fundamental problems with the subject property and the extent of any works required to make the subject property capable of beneficial habitation. The appellant pointed to the Omagh District Council notice of refusal in regard to the application for a certificate of fitness. That was dated 7 June 2012 and was made under the Private Tenancies (Northern Ireland) Order 2006, Article 36 (5). The appellant further submitted that the subject property

did not fulfil the statutory assumptions in paragraph 12 (1) and (2) of Schedule 12 of the 1977 Order, that the hereditament was “...in an average state of internal repair and fit out...” and that the hereditament was in the “...state and circumstances in which it might reasonably be expected to be”.

9. Accordingly the appellant’s submission, in summary, was that:-

9.1 The estimated cost of £30,500 (at 2004/2005 prices) to make the subject property habitable, including the cost of removal of the corrugated roof structure, had properly to be taken into account in assigning a revised rateable capital valuation to the subject property;

9.2 The gross rateable area of the subject property ought properly to be reduced by 26 m<sup>2</sup> thereby discounting the area occupied by the corrugated roof structure (118 m<sup>2</sup> - 26 m<sup>2</sup> = 92 m<sup>2</sup>) and the proper rateable area ought thus to be 92 m<sup>2</sup>.

10. The Commissioner’s submission to the tribunal was that in arriving at the capital value assessment of the subject property 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. Five “comparables” are set out in a schedule to the Commissioner’s Presentation of Evidence, with further particulars being given thereafter in respect of these comparables, including photographs. The subject property exists in an urban location and the map provided indicated that the selection of two of these potential comparables were in close proximity and were located on Brookmount Road, Omagh, and that the other three were located a little further away, but nonetheless in an urban location in Omagh, but a little further to the north.

11. In this case the capital value has been assessed at figure of £77,500. On behalf of the Commissioner it has been contended that that figure is fair and reasonable in comparison to other properties; the statutory basis for valuation has been referred to and especially reference has been made to Schedule 12 to the 1977 Order (as amended) in arriving at that assessment. Schedule 12 provides that the assessment of capital value is made based upon certain statutory assumptions which are set forth in the Presentation of Evidence. One of these assumptions, that mentioned in Schedule 12, Paragraph 12 (1), is the statutory assumption that – “...the hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality”.

12. The comparables set out in the Presentation of Evidence all had unchallenged capital valuations. Brief particulars, including those of the subject property, indicated are as follows:

(1) 8 Brookmount Road, Gortmore, Omagh BT78 5HZ, 1946-1965 attached house, poor repair, mains water, mains electricity available, mains sewerage, GEA 118m<sup>2</sup>, 3 bedrooms, 1 bathroom, Economy 7 central heating – the subject property – capital value £77,500;

(2) 32 Gortmore Gardens, Gortmore, Omagh BT78 5DZ, 1946-1965 terrace house, average repair, mains water, mains electricity, mains sewerage, GEA 98.00m<sup>2</sup>, Motor

House (MH) 16.80m<sup>2</sup>, 3 bedrooms, 1 bathroom, full central heating – capital value £85,000;

(3) 34 Gortmore Gardens, Gortmore, Omagh BT78 5DZ, 1946-1965 terrace house, average repair, mains water, mains electricity, mains sewerage, GEA 98.00m<sup>2</sup>, MH 16.80m<sup>2</sup>, 3 bedrooms, 1 bathroom, full central heating – capital value £85,000;

(4) 32 Brookmount Road, Gortmore, Omagh BT78 5HZ, inter-war semi-detached house, average repair, mains water, mains electricity, mains sewerage, GEA 118.00m<sup>2</sup>, MH 13.00m<sup>2</sup>, 3 bedrooms, 1 bathroom, full oil central heating – capital value £85,000;

(5) 62 Derry Road, Gortmore, Omagh BT78 5DY, 1946-1965 terrace house, average repair, mains water, mains electricity, mains sewerage, GEA 117.00m<sup>2</sup>, 3 bedrooms, 1 bathroom, full central heating – capital value £90,000;

(6) 51 Brookmount Road, Gortmore, Omagh BT78 5HZ, 1946-1965 detached bungalow, average repair, mains water, mains electricity, mains sewerage, GEA 111.00m<sup>2</sup>, MH 17.00m<sup>2</sup>, 3 bedrooms, 1 bathroom, full oil central heating – capital value £105,000.

## **THE TRIBUNAL'S DECISION**

13. Article 54 of the 1977 Order (as amended) enables a person to appeal to the tribunal against the decision of the Commissioner on appeal regarding capital value. In this case the capital value has been assessed at a figure of £77,500 and that figure has been upheld on appeal to the Commissioner. On behalf of the respondent it has been contended that that figure is fair and reasonable in comparison to other properties. This assessment is challenged by the appellant and it is against that figure that the appellant's appeal is now made to this tribunal.
14. The tribunal notes, as a matter of primary significance, the statutory presumption which is contained within the 1977 Order, Article 54(3). This is an important matter because on account of this statutory presumption, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown. This means that in order to succeed in the appeal, the onus is on any appellant either successfully to challenge and displace that statutory presumption of correctness, or the Commissioner's determination on appeal, objectively viewed, must be seen to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the capital value to an appropriate figure. The tribunal saw nothing in the general approach taken to suggest that the matter had been approached for assessment in anything other than the prescribed manner as provided for in Schedule 12 of the 1977 Order, as amended.
15. In the light of the evidence and the submissions, the tribunal examined the essential issue as to whether the appellant had been put forward sufficient evidence or argument effectively successfully to challenge evidence emerging from the comparables, or other sufficient evidence or argument effectively to displace the statutory presumption of correctness or to lead the tribunal to the conclusion that the respondent had misapplied the law to the facts of the matter.

16. The statutory provisions state that the capital value of the subject property shall be the amount which (on the statutory assumptions) the property 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. Further, in estimating the capital value regard shall be had to the capital values of comparable properties in the same state and circumstances as the subject property. The tribunal accordingly conducted an analysis of the appropriateness of selection and the weight to be attached to the various comparables, insofar as this related to the statutory basis of valuation. The comparables were challenged by the appellant who submitted that the comparables are not similar to the subject property and contention made was that the subject property had unique and very different (much poorer) characteristics and circumstances.
17. Examining the specific characteristics and circumstances of the subject property, the tribunal notes a number of issues of significance which might be described as unique characteristics of the subject property, when examined in the context of the respondent's selected comparables. These characteristics and circumstances include the following matters. The subject property has a structure of GEA 26 m<sup>2</sup> which, notwithstanding the suggestion made that this might have been an external open yard at some time in the past, appears to have been for some time included as a part of the habitable structure. This might have been roofed differently in the past but, some time ago, this part was roofed with corrugated metal roofing. This roofing has deteriorated and has ceased to be effective. There is substantial water ingress where this roofing joins the main structure which fact is clear from the photographic and other evidence. The appellant has suggested the extent of works required to demolish this part of the structure and to close off the other part of the structure to restore its integrity. Further to the forgoing, there appears to be an issue that the external street level to the frontage is higher than the immediate interior at the front door. There is no off-street parking nor any front garden. The subject property is immediately contiguous to unoccupied commercial premises. The subject property fronts onto a one-way street.
18. Examining the comparables selected by the respondent, the tribunal found certain of these not to be of particular assistance. For example, number 32 Brookmount Road, Gortmore, Omagh, notwithstanding being located in relatively close proximity to the subject property was determined by the tribunal to be anomalous and appeared to be undervalued, when the tribunal examined any evidence of tone of the list. Number 32 and 34 Gortmore Gardens were smaller and were located in a different area of Omagh, with seemingly different circumstances and characteristics. Number 62 Derry Road is located quite close the subject property and adjacent to commercial premises. Number 51 Brookmount Road appears from the evidence provided to be not particularly helpful as comparator. On the strength of the evidence provided, the tribunal's considered assessment is that, taking into account such evidence as exists of tone of the list, an appropriate unadjusted capital valuation for the subject property would be £87,500. This figure includes the full assessment of the property at GEA 118m<sup>2</sup>. On this latter issue, having noted the appellant's submissions in that regard, the tribunal does not uphold the appellant's contention that the assessed rateable area of the subject property ought to be reduced by deducting an area of GEA 26 m<sup>2</sup>, thus producing a rateable area of GEA 92 m<sup>2</sup>. The correct rateable area is therefore GEA 118m<sup>2</sup>.

19. There are however significant adjustments properly to be made to the forgoing figure. The appellant has presented the argument that, on account of the specific circumstances of the subject property, the statutory assumption (mentioned in Schedule 12, Paragraph 12 (1) of the 1977 Order) that – “...*the hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality*”, ought to be disapplied. The tribunal does not accede to that argument. Accordingly applying this statutory assumption and taking account of all other relevant considerations, the tribunal’s assessment is that the adjusted capital value ought to be a figure of £70,000, to take account of significant matters of external disrepair and condition and the unique and particular circumstances applicable to the subject property.
  
20. Accordingly the appeal succeeds to this extent and the decision of the Commissioner in this appeal is not upheld. As a consequence, the tribunal determines that the capital value of the subject property in the capital valuation list is properly to be amended to a figure of £70,000 and the tribunal Orders the list to be amended accordingly.

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

**8<sup>th</sup> October 2013**