

**NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007**

CASE REFERENCE NUMBER: NIVT 29/16

DAVID McCOURT APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr. Alan Reid LL.B

Members: Eric Spence and David Rose

Belfast, 21st November 2018

DECISION

The unanimous decision of the Tribunal is that the Notice of Decision on Appeal of the Commissioner of Valuation for Northern Ireland in respect of the valuation of the property at 95, Dublin Road, Kilcoo, Drumena, Newry, County Down BT34 5HT as contained in the Notice of Decision dated 28th February 2017 is upheld in confirmation of the Capital Value of £180,000.00 and the Appellant's Appeal is dismissed.

REASONS

1. Introduction

- 1.1 This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order").
- 1.2 By a Notice of Appeal dated 22nd March 2017 the Appellant appealed to the Northern Ireland Valuation Tribunal ("the Tribunal") against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland ("the Commissioner") dated 28th February 2017 in respect of the Capital Value of a hereditament situated at 95, Dublin Road, Kilcoo, Drumena, Newry, County Down BT34 5HT ("the Subject Property").
- 1.3 The parties to the Appeal had indicated that they were each content that the Appeal be disposed of on the basis of written representations in accordance with Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007 ("the Rules") and accordingly there was no appearance before the Tribunal by or on behalf of any of the parties.

- 1.4 The Appellant in his Notice of Appeal had identified Kathleen Donnan (“the Interested Party”) as a co-owner of the Subject Property and therefore as a person whose liability to be rated might be affected by the Appeal. Prior to the Hearing the Interested Party had also been notified of the Hearing and given an opportunity to appear at or make submissions to the Hearing. The Interested Party had indicated through her Solicitor that she did not intend to appear at the Hearing and she did not make any submissions to the Tribunal.

2. **The Law**

The relevant statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). The statutory provisions regarding the basis for valuation are contained in Article 8 of the 2006 Order which amended Article 39 of the 1977 Order and have been fully set out in numerous previous decisions of this Tribunal. The Tribunal does not therefore intend in this decision to fully set out the statutory provisions of Article 8.

3. **The Evidence**

The Tribunal heard no oral evidence but had before it copies of various documents including the following:-

- 3.1 Valuation Certificate issued by the Commissioner of Valuation on 28th February 2017.
- 3.2 The Appellant’s Notice of Appeal dated 22nd March 2017.
- 3.3 A letter dated 23rd March 2017 from the Appellant’s Solicitor, Paul McMullan.
- 3.4 Copies of Court Pleadings in relation to an action in the Chancery Division of the High Court of Justice in Northern Ireland between the Appellant and the Interested Party (as provided by the Appellant’s Solicitor, Paul McMullan).
- 3.5 Copies of photographs of the Subject Property provided by the Appellant.
- 3.6 A letter dated 23rd March 2017 from Lindsay Graham Estate Agent to the Appellant’s Solicitor, Paul McMullan.
- 3.7 A document entitled “Presentation of Evidence” submitted on behalf of the Commissioner by Edel Mackin MRICS of Land & Property Services and received by the Tribunal on 27th July 2018.
- 3.8 A letter dated 7th August 2018 from the Tribunal to the Appellant’s Solicitor, Paul McMullan (and copied to the Appellant) enclosing a copy of the Respondent’s presentation of evidence and inviting further submissions in the light thereof within twenty-eight days.

All of these documents have been provided to the parties who had each been given an opportunity to consider and respond to them before being considered by the Tribunal.

4. The Facts

Based upon the information before it the Tribunal determined upon the balance of probabilities the following facts: -

- 4.1 The Subject Property is a partly constructed single storey dwelling located in a rural location near Kilcoo and with a habitable space of 198.5m². The property has no fitted sanitary ware, no fitted septic tank, no fitted kitchen and no fitted electrics. It is uninhabited.
- 4.2 The Subject Property has not been completed and is the subject of litigation in the Chancery Division of the High Court between the Appellant and the Interested Party. The site upon which the Subject Property is constructed had been purchased and built whilst the Appellant and the Interested Party were in a relationship but following the breakdown of that relationship building work had ceased.
- 4.3 On 14th July 2014 the District Valuer had issued a Completion Notice in respect of the Subject Property indicating a completion date of 20th October 2014. The Completion Notice had been served upon the Appellant.
- 4.4 On 26th August 2014 the Interested Party appealed to the Commissioner of Valuation against the issue of the Completion Notice. Following consideration of that appeal the Commissioner of Valuation confirmed the Completion Notice and a Certificate to that effect was issued on 17th September 2017. The effect of this was that the Subject Property was deemed complete with effect from 20th October 2014.
- 4.5. On 25th October 2016 the Appellant submitted an application to the District Valuer to have the property removed from the Valuation List on the grounds that it was derelict and not habitable. This application was refused and a Certificate of Valuation was issued on the 19th January 2017.
- 4.6 On 16th February 2017 the Appellant appealed the said decision of the District Valuer to the Commissioner of Valuation seeking to have the property removed from the Valuation List. The Commissioner of Valuation affirmed the decision of the District Valuer and confirmed that the Subject Property would be retained on the Valuation List with a Capital Value of £180,000.00. A Certificate of Valuation to this effect was issued on 28th February 2017 and it is this Decision which the Appellant now appeals to the Tribunal.
- 4.7 In arriving at the Capital Value Assessment figure of £180,000.00 regard was had to the capital value assessments of other properties in the Valuation List considered comparable. The comparables were set out in an Appendix to the "Presentation of Evidence" submitted on behalf of the Commissioner. There were a total of four comparables, particulars of which were provided together with photographs of each of the comparables and of the Subject Property.

The four comparable properties were located at 14 Tullynasoo Road Kilcoo County Down BT34 5JD, 112 Tullybrannigan Road, Newcastle, County Down

BT33 OPW, 26 Letalian Road, Newry, County Down BT34 5EY and 180 Castlewellan Road, Newry, County Down BT34 5EX. These properties had respective habitable spaces of 183m², 185m², 188m² and 195.5m². With the exception of the property at 180 Castlewellan Road, which had been constructed in 1998, they were all detached dwellings which had been constructed in 2013 or 2014. All of these properties had unchallenged Capital Values of £180,000.00.

5. The Appellant's Submissions

The Appellant, in summary, made the following submissions in his Notice of Appeal to the Tribunal and in correspondence from his Solicitor:-

- 5.1 The Subject Property was incomplete, not capable of being inhabited and therefore had at best a value as a building site only (although in the Form 3 Notice of Appeal, the Appellant indicated that he believed that the actual valuation of the Subject Property should be nil).
- 5.2 In his letter of 23rd March 2017, the Appellant's Solicitor indicated that in so far as they were aware no Completion Notice had been issued.
- 5.3 Even if a Completion Notice were issued, a Completion Notice would presume that work to complete the construction of the dwelling would "proceed at a reasonable pace". That could not happen in regard to the Subject Property as the Subject Property was the subject of litigation in the High Court between the Appellant and the Interested Party. The construction of the dwelling could not be completed until the litigation was concluded.
- 5.4 The Appellant's submissions were supported by a letter dated 23rd March 2017 from Lindsay Graham Estate Agent to the Appellant's Solicitor expressing the opinion that the property was not capable of occupation as it was uncompleted, an Architect's Supervision Certificate was not available and a Consent to Discharge in respect of the septic tank had not been issued. Without that Architect's Certificate or Consent to Discharge being obtained it would be impossible to sell the Subject Property and therefore the Subject Property could only be valued as a site.

6. The Respondent's Submissions

In summary, the following submissions were made on behalf of the Commissioner -

- 6.1 A Completion Notice had been issued in respect of the Subject Property on 14th July 2014 specifying a completion date of 20th October 2014. That Completion Notice had been appealed unsuccessfully by the Interested Party.
- 6.2 Where a Completion Notice is issued in respect of a property it is deemed to be complete for rating purposes on the completion date specified in the Completion Notice which, in this case, was 20th October 2014. It is thus valued and entered into the Valuation List as if it were complete on that date and by reference to the statutory assumptions.

- 6.3 The provisions of the 1977 Order do not make any provision for the personal financial circumstances of a property owner to be taken into account when considering the Completion Notice process or when valuing a property which has been deemed to be complete as a result of that process as has been confirmed in previous decisions of the Tribunal, most particularly the case of *Moffett v Commissioner of Valuations* (NIVT 15/12).
- 6.4 The Subject Property was therefore correctly included in the Valuation List and the four comparable properties referred to in the Respondent's Presentation of Evidence demonstrated that the Subject Property was valued in tone with other properties in the Valuation List.

7. The Tribunal's Decision

- 7.1 In this case the Subject Property had been the subject of the issue of a Completion Notice which had specified a deemed completion date for the Subject Property of 20th October 2014. The Completion Notice had been unsuccessfully appealed and as a result the Subject Property was entered into the Valuation List with effect from 20th October 2014. The Tribunal noted that in the letter dated 23rd March 2017 insofar as they were aware no Completion Notice had been issued. However, the details of the issue of the Completion Notice and the subsequent appeal in relation to it were detailed in the Respondent's Presentation of Evidence and no further submissions in relation to the absence of a Completion Notice were received from the Appellant prior to the Hearing. The Tribunal was therefore satisfied on the balance of probabilities that a Completion Notice had been issued resulting in the property being listed in the Valuation List with effect from 20th October 2014.
- 7.2 Whilst the Tribunal noted the evidence regarding the ongoing proceedings in the High Court between the Appellant and the Interested Party the Tribunal had no evidence before it to suggest that on an objective basis the Subject Property was not capable of being completed within the three-month period specified in the Completion Notice for any reason other than the lack of available finance. As contended by the Respondent, the relevant legislation does not make provision for the personal financial circumstances of a property owner to be taken into account when considering whether a property could reasonably be completed within a three-month period. The Tribunal is bound by the legislation and accordingly the Tribunal is satisfied on the balance of probabilities that as such the property should appear in the Valuation List.
- 7.3 Article 54 of the 1977 Order enables a person to appeal to the Tribunal against a decision of the Commissioner on appeal as to Capital Value. In this case the Capital Value for the Subject Property has been assessed at the Antecedent Valuation Date ("AVD") of 1st January 2005 at a figure of £180,000.00. On behalf of the Commissioner it has been contended that that figure is fair and reasonable when compared to other properties in the Valuation List. The statutory basis for valuation has been referred to and, in particular, reference has been made to Schedule 12 to the 1977 Order in arriving at that assessment.

- 7.4 The Tribunal must begin its task by taking account of an important statutory presumption contained within the 1977 Order. Article 54(3) of the 1977 Order provides: *“On an appeal under this Article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown”*. The onus is therefore upon the Appellant in any case to challenge and to displace that presumption, or perhaps for the Commissioner’s decision on appeal to be seen to be so manifestly incorrect that the Tribunal must take steps to rectify the situation.
- 7.5 In this case the Tribunal saw nothing in the approach adopted to achieve the initial assessment as to Capital Value nor in the decision of the Commissioner on Appeal to suggest that the matter had been assessed on anything other than the prescribed manner provided for in Schedule 12, paragraphs 7 (and following) of the 1977 Order. The statutory mechanism has been expressly referred to in the Commissioner’s submissions to the Tribunal and the Tribunal noted the evidence submitted as to comparables. The Tribunal accordingly concludes that the correct statutory approach has been followed in this case in assessing the Capital Value.
- 7.6 The Tribunal then turns to consider whether the evidence put before it or the arguments made by the Appellants are sufficient to displace the statutory presumption. Those arguments have been summarized above.
- 7.7 Schedule 12 of the 1977 Order requires that in assessing the amount which the Subject Property might reasonably have been expected to realize if it had been sold on the open market by a willing seller on the relevant AVD (in this case 1st January 2005) regard must be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances. The Respondent referred the Tribunal to four potentially comparable hereditaments. The Appellant did not refer the Tribunal to any comparable hereditaments nor did the Appellant seek to challenge any of the comparables put forward by the Respondent in support of the Capital Value Assessment of the Subject Property in the sum of £180,000.00.
- 7.8 The Tribunal has carefully considered the details and characteristics of all of the properties put forward by the Respondent as suggested comparable hereditaments in respect of the Subject Property. The details of all of these comparable properties were available to the Tribunal and have been referred to in the record of evidence above. Taking account of the type of construction of these properties and of their location, age and size the Tribunal was satisfied on the balance of probabilities that they were suitable comparables to have regard to in establishing the capital value of the Subject Property. The Tribunal was therefore satisfied on the balance of probabilities that their respective Capital Values supported a Capital Value of £180,000.00 in respect of the Subject Property.
- 7.9 The Tribunal is therefore satisfied on the balance of probabilities that the evidence placed before it supports the Respondent’s contention that the appropriate Capital Value Assessment of the Subject Property at the AVD of 1st January 2005 is £180,000.00 and that the Appellant’s evidence and

submissions are not sufficiently persuasive to displace the statutory presumptions as referred to above.

- 7.9 Accordingly, the unanimous decision of the Tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland in respect of the Valuation of the Subject Property as contained in the Notice of Decision dated 28th February 2017 in the sum of £180,000.00 is upheld and the Appeal is dismissed.

Mr Alan Reid, Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 5th December 2018