

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: 24/15

MARTIN McKAY and ROISIN McKAY - APPELLANTS

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

**DECISION OF PRESIDENT OF THE NORTHERN IRELAND VALUATION
TRIBUNAL ON APPLICATION FOR LEAVE TO APPEAL TO THE LANDS
TRIBUNAL**

I do grant leave to the appellants to appeal to the Lands Tribunal, for the reasons stated below.

REASONS

Introduction

1. The appellants in this matter appealed under Paragraph 4 of Schedule 8B to the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order") against the decision of the Commissioner of Valuation in respect of a hereditament situated at number 45 Friary Road, Armoy, Ballymoney, County Antrim BT53 8XZ ("the Property").

2. The appellants had requested an oral hearing and such a hearing of the appeal took place on 5 April 2017. By decision, with reasons, promulgated by the tribunal on 10 May 2017 ("the Decision") the tribunal's determination as set forth in the Decision was that the appeal should be dismissed. The first-named appellant, Mr McKay, by letter dated 22 May 2017, requested "leave to appeal" which request was treated by the Chairman of the tribunal as constituting a request for a Review of the Decision. On the 24 May 2017, the Chairman determined that, as there was no information contained in Mr McKay's letter which was not before the tribunal when it reached its decision, accordingly the application for a review was refused. The first-named appellant was notified of this by letter dated 31 May 2017 from the tribunal Secretary.

3. By letter dated 12 June 2017 ("the appeal letter"), Mr McKay, wrote requesting leave to appeal, in essence setting forth the same grounds as had been mentioned in the letter dated 22 May 2017. I shall briefly mention some of these grounds below but, firstly, I wish to make a few observations concerning the conduct of the matter.
4. This was clearly an appeal instituted by both Mr Martin McKay and by Mrs or Ms Roisin McKay, as evidenced by the details of appeal comprised in Form 9, this Form being completed in joint names and the Form of Appeal having been signed by both of these persons. The relevant correspondence however was signed by Mr McKay in his sole name. The relevant Valuation Certificate was issued in the name of "Martin McKay", as occupier. It is important in these cases for any tribunal dealing with an appeal to seek clarity as to the identity of any appellant, especially so if the Form of Appeal is evidently completed by more than one person. In any event, for the purposes of determining the leave to appeal issue in this matter, I do not think that the interests of any co-owner will be prejudiced by my addressing the matter upon the basis of Mr McKay's stated interest and, further, on the basis that Mr McKay is most probably speaking both on his own behalf and also on behalf of any co-owner, as applicable.
5. The next procedural issue which I wish to mention arises in the context of any request for review. Considering the formulation of the statutory review provisions contained within the tribunal's rules of procedure that are comprised in the Valuation Tribunal Rules (Northern Ireland) 2007 (as amended) ("the Rules") at rule 21 it is provided that if, on the application of a party, the tribunal is satisfied upon one or more of four specified grounds, the tribunal may review the relevant decision. There is a time limitation of 14 days provided for the making of any application, in writing, for a review, with full reasons requiring to be stated. Rule 21 (4) provides that the parties shall "have an opportunity to be heard" on any application or proposal for review under rule 21.
6. Unlike some other statutory tribunal jurisdictions, there is no mechanism (for example such as exists in Employment Tribunals) for a legal Chairman or Employment Judge to determine first whether or not any application for a review stands a reasonable prospect of success. This latter is what might be described as a "first filter" for weeding out unmeritorious applications. In the absence of this filtering mechanism, designed to prevent cases proceeding any further which have no reasonable prospect of success, in the Valuation Tribunal's statutory regime any person seeking a review of a decision is entitled to an opportunity to be heard, without express qualification. This latter opportunity, relates to any application (for example in the circumstances of the present case) for a review. It is a matter of statutory interpretation as to whether the affording of such an "opportunity to be heard" as is specified in rule 21 (4) of the Rules, requires a full oral hearing to be afforded to any party seeking a review, or if this merely necessitates that a fair and proper opportunity (of any type) shall be afforded to the party seeking a review to

present argument, in some form, in support of the proposition that a review of the relevant decision should be considered by the tribunal. In this latter respect, it has to be observed that the Rules, as currently drafted, do not greatly assist in providing clarity.

7. In this case the Rules were interpreted by the Chairman as affording to him the opportunity to determine (apparently of his own volition) that a review ought not to be afforded, for the reason stated. I am not entirely sure that this interpretation is correct. However, the point has not been expressly or by implication argued by Mr McKay, but I mention this for completeness and in case anything otherwise turned upon the point which might have properly persuaded me that leave to appeal to the Lands Tribunal ought to be granted, upon this basis alone, irrespective of any other issue.
8. There are however some further considerations, perhaps, that properly ought to be mentioned. Firstly, the letter dated 22 May 2017 from Mr McKay does not expressly request a "review" (which word indeed is nowhere mentioned in the letter) but instead it expressly requests "leave to appeal." It may therefore be that both the 22 May 2017 letter and the subsequent 12 June 2017 letter, expressed as they are in nearly identical terms, constituted, both of them, requests for leave to appeal, as opposed to the first one constituting a request for a review under the statutory provisions. On this basis, if there is no deemed request for a review, the Chairman's purported determination is neither here nor there. Even if what I have just said is incorrect, having considered the matter, my view is that my consideration of the leave to appeal issue might be sufficient in affording adequate scrutiny of the Decision with a view to reaching a determination upon the issue of whether the case ought properly to proceed to an appeal to the Lands Tribunal.
9. If I am incorrect in any of what I have just stated and if I were otherwise to have refused leave to appeal, a mechanism existed for Mr McKay to seek leave directly from the Lands Tribunal, both concerning any review issue and also concerning any other substantive issue arising in the case.
10. Turning then to the letter of 12 June 2017 ("the appeal letter") I am in a position to proceed with a determination, with reference to the appeal letter grounds and with reference to any other relevant issues, concerning whether or not to grant leave to appeal to the Lands Tribunal under the statutory provisions which are mentioned below.

The Applicable Law

11. The statutory provisions relevant to my determination in the matter are to be found in the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order") and in the Lands Tribunal (Amendment) Rules (Northern Ireland) 2007 ("the Lands Tribunal Rules 2007"). These are as follows (in respect of the 2006 Order): -

“Appeal from decision or direction of Valuation Tribunal

54A. —(1) Any person who is aggrieved by any decision or direction of the Valuation Tribunal under Article.... 54(2) may, with the leave of—

(a) the Lands Tribunal; or

(b) the President of the Valuation Tribunal,
appeal to the Lands Tribunal.”

These are as follows (in respect of the Lands Tribunal Rules 2007): -

“ 4. In rule A1—

(a) -

(b) at the end there shall be added the following paragraphs—

“(4) an appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal shall be instituted by serving on the registrar a notice of appeal in accordance with Form AC within 28 days from the date of the grant of leave of appeal by the President of the Valuation Tribunal.

(5) A notice of appeal under paragraph (4) shall be accompanied by—

(a) a copy of the decision or direction of the Valuation Tribunal against which the appeal is made; and

(b) a copy of the decision of the President of the Valuation Tribunal granting leave to appeal.

(6) An application for leave to appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal may be made to the Lands Tribunal only where the applicant has been refused leave to appeal by the President of the Valuation Tribunal.””

The Determination

12. I have carefully perused the Decision in the light of the issues raised in the appeal letter as a basis for seeking leave to appeal. I have, further, considered any information concerning the manner in which the hearing was conducted by the tribunal and I have deliberated upon the procedure engaged in the management of the hearing and generally by the tribunal. I have endeavoured to consider, insofar as possible, any issue emerging in the case going beyond mere dissatisfaction on Mr McKay’s part with the outcome, which might properly constitute a substantive, proper and persuasive basis upon which leave to appeal might be granted

13. The appeal letter sets forth particulars of the grounds upon which such a request for leave is made. Upon reading the appeal letter, the points being made by Mr McKay are noted. Mr McKay states that he appealed the initial completion, which as far as he was concerned was a clear registration of his objection to any Completion Notice. He did not feel that he needed to “appeal an appeal” (as he puts it) as he believed it was only one stage in a process which would eventually lead to his being able to explain his position in front of a panel such as the Valuation Tribunal. He states that in the build-up to the tribunal hearing, he was able to gain insight into the respondent’s thinking, for the first time, in the process. Mr McKay then sets forth, in the appeal letter, a number of issues which might perhaps have been presented in the oral case argued before the tribunal, upon which the tribunal relied in reaching the Decision.
14. The difficulty in my being definite upon this latter point is that the Decision, somewhat regrettably, is succinct in form to the point of over-brevity. Indeed the entire recital of Mr McKay’s arguments and submissions is encapsulated in a very brief paragraph consisting of only six lines in the Decision (that being paragraph number 5.6). This brevity somewhat restricts me in my task of determining whether or not any arguments advanced by the appellant in his appeal to the tribunal were fully and properly considered by the tribunal. I have no way of knowing if points made in the appeal letter were also argued before the tribunal and indeed were dismissed upon their substantive merits.
15. I note that, in this matter, the Completion Notice was served on 23 July 2012 in respect of a Completion Date of 21 October 2012. In December 2012, Mr McKay lodged an appeal to the Commissioner of Valuation against the Completion Notice and he argued that he was not in a position to complete the dwelling due to financial issues. For whatever reason Mr McKay did not proceed with an appeal to the tribunal that point. On 11 February 2015, the property was valued for rating purposes, effective from 21 October 2012. In April 2015 (following an appeal made by Mr McKay to the Commissioner) the capital value was reduced by 10%. It was not until 29 June 2015 that Mr McKay (and his co-appellant) initiated an appeal to the tribunal. In doing so, he employed Form 9, which Form represents the mechanism for appealing a Completion Notice, but not for appealing a capital valuation.
16. I have scrutinised the Decision in order to determine the manner in which the tribunal addressed the issue of any appeal against a Completion Notice being made out of time. I am not fully satisfied that the tribunal has adequately and properly accounted for Mr McKay’s arguments and I am not satisfied that the tribunal has adequately set forth in the Decision full and proper particulars of the tribunal’s resolution of the issues concerning applicable statutory time limitations and indeed has addressed any basis for possible extension of time (or indeed the converse) on foot of any of the arguments advanced by Mr McKay. There are clearly some matters of settled law (for example, the financial means of any party are not properly to be taken into account in the

determination of matters of this type) which might have arisen, but my primary concerns are procedural. These concerns relate to the fundamental entitlement of any appellant to the Valuation Tribunal to have a reasonably comprehensive and clear adjudication afforded concerning any issues raised or emerging in any appeal and the tribunal's fundamental obligation in that regard adequately to address and to dispose of any pertinent issues in order to give any party a clear and adequately comprehensive indication of why they have won or lost. (See in that regard ***Meek v City of Birmingham District Council [1987] IRLR 250 CA*** where Bingham LJ said: '*It has on a number of occasions been made plain that the decision... [of the tribunal]... is not required to be an elaborate formalistic product of a refined legal draughtsmanship but it must contain an outline of the story which has given rise to the complaint and a summary of the tribunal's basic factual conclusions and a statement of the reasons which led them to reach the conclusion which they do so on those basic facts. The parties are entitled to be told why they have won or lost. There should be a sufficient account of the facts and the reasoning to enable [the appellant body or Court] ... to see whether the question of law arises.*').

17. As I am not satisfied that the tribunal has properly and fully discharged its duty in that respect in this case, I do grant leave to Mr McKay (and as may be applicable to the co-appellant Mrs or Ms Roisin McKay) to appeal to the Lands Tribunal.

Dated this 29th day of June 2017

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