

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

**CASE REFERENCE NUMBER: NIVT 48/15**

**LIAM MOORE - APPELLANT  
AND  
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr. Alan Reid LL.B  
Members: Chris Kenton FRICS and Peter Somerville**

**Belfast, 15<sup>th</sup> March 2017**

## **DECISION**

The unanimous decision of the Tribunal is that the Capital Value of the property at 44A Boleran Road, Tamnymore, Garvagh, Coleraine, BT51 5EG as determined in a Notice of Decision dated 16<sup>th</sup> February 2016 is confirmed 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 received by the Tribunal on 14<sup>th</sup> April 2016 the Appellant appealed to the Northern Ireland Valuation Tribunal against the Notice of Decision issued by the Commissioner of Valuation for Northern Ireland ("the Commissioner") dated 16<sup>th</sup> February 2016 in respect of the Valuation of a hereditament situated at 44A Boleran Road, Tamnymore, Garvagh, Coleraine, BT51 5EG ("the Subject Property")
- 1.3 By an Order of the Tribunal dated 25<sup>th</sup> May 2016 the time for the Appellant to deliver the said Notice of Appeal had been extended to 14<sup>th</sup> April 2016.
- 1.4 The Appellant was represented at the Appeal by his father, Mr Danny Moore accompanied by the Appellant's sister Deborah McQuillan. Mrs Alison Jackson accompanied by Mr Gareth Neill appeared for and represented the Commissioner as Respondent.

1.5 The Appellant's Notice of Appeal purported to challenge the Capital Valuation of the subject property and the validity of a Completion Notice which had been issued on 14<sup>th</sup> December 2011. The Order of the Tribunal dated 25<sup>th</sup> May 2016 did not distinguish between the two grounds of Appeal with regard to the extension of time for Appeal granted by the said Order. Accordingly, after inviting and carefully considering representations from both parties in relation to the matter the Tribunal proceeded to consider all of the grounds of Appeal as set out in the Appellant's Notice of Appeal.

## 2. **The Law**

2.1 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 had 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 provision of Article 8.

2.2 The relevant statutory provisions regarding the issue of Completion Notices are contained in Article 25B and Schedule 8B to the 1977 Order and have similarly been set out in previous decisions of the Tribunal. Again therefore the Tribunal does not intend in this decision to fully set out those statutory provisions.

## 3. **The Evidence**

3.1 The Tribunal had before it the Appellant's Notice of Appeal received by the Tribunal on 14<sup>th</sup> April 2016 and copies of various documents including:-

- Order of the Tribunal dated 25<sup>th</sup> May 2016 referred to above.
- Valuation Certificate in respect of the Subject Property issued on 16<sup>th</sup> February 2016.
- A document entitled "Presentation of Evidence" submitted on behalf of the Commissioner by Mrs Alison Jackson MRICS of Land and Property Services and received by the Tribunal on 22<sup>nd</sup> November 2016.
- Correspondence between the Tribunal and the Parties

3.2 At the commencement of the hearing of the Appeal both parties confirmed that all of these documents had been provided to each of them and that they had had an opportunity to consider them prior to the hearing.

#### **4. The Facts**

On the basis of such information as was before it, the Tribunal determined, upon the balance of probabilities, the following facts:-

- 4.1 The hereditament is a detached two story dwelling situated at 44A Boleran Road, Garvagh, Coleraine, BT51 5EG (“the Subject Property”). The Subject Property was stated to be owned by the Appellant who was the rate payer.
- 4.2 The Subject Property is of brick/block construction with a slate pitched roof located approximately 1.5 miles North West of Garvagh. It has a garage, the gross external area (“GEA”) of the house is 354 m<sup>2</sup> and the garage has a GEA of 42 m<sup>2</sup>.
- 4.3 The construction of the Subject Property is incomplete. The Tribunal had before it photographs of the property which the parties helpfully agreed accurately showed the state of construction of the property.
- 4.4 The Capital Value Assessment of the Subject Property is £260,000.00 at the Antecedent Valuation Date (“AVD”) that date being 1<sup>st</sup> January 2005. The Capital Value Assessment had previously been £290,000.00 but had been reduced by the Commissioner to £260,000.00 on 16<sup>th</sup> February 2016 due to the correction of a previous survey error. In arriving at the Capital Value Assessment figure of £260,000.00 regard was had to assessments of properties in the Valuation List considered by the Respondent to be comparable. These comparables were set out in a Schedule to the “Presentation of Evidence” submitted on behalf of the Commissioner. There were a total of five such comparables further particulars of which, including photographs, were provided.
- 4.5 The Subject Property had been under construction by the Appellant for several years and is not yet complete. The Appellant is currently working abroad and carries out construction work on the Subject Property as and when his circumstances and available finance allow.

#### **5. The Appellant's Submissions**

In summary, the Appellant’s father Mr Danny Moore made the following submissions on behalf of the Appellant -

- 5.1 The Subject Property could not be completed within three months of the date of the service of the Completion Notice. It has no electricity, plumbing or any facilities and was a “shell” without windows and doors.
- 5.2 The works could not be completed because the Appellant was only carrying out the work as and when his personal circumstances and finances permitted.
- 5.3 On behalf of the Appellant Mr Moore however accepted that the description of the outstanding works which would be required to complete the Subject Property as set out by the Commissioner were correct and that a Building Contractor probably could complete those works within a three month period.

- 5.4 It was submitted on behalf of the Appellant that the Capital Value of the Subject Property at £260,000.00 was excessive and that when complete the Capital Value of the Subject Property would be £150,000.00 to £170,000.00 and that in its present unfinished state was in the region of £80,000.00.
- 5.5 Whilst the Appellant did not seek to challenge the Capital Values of any of the comparable properties put forward in the Respondent's Presentation of Evidence or the suitability of their state and circumstances as comparables the Tribunal's attention was drawn on behalf of the Appellant to a further prospective comparable property at Millfield House, 44 Boleran Road, Garvagh. It was accepted on behalf of the Appellant that this property was a detached bungalow and was significantly smaller than the Subject Property or any of the comparables put forward on behalf of the Commissioner. However, it was contended on behalf of the Appellant that this property together with five acres of land had recently been sold for a price in the region of £120,000.00. Mr Moore fairly accepted that he could not verify this price.

## **6. The Respondent's Submissions**

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

- 6.1 With regard to the state of partial construction of the Subject Property Mrs Jackson referred the Tribunal to the previous decision of the Tribunal in the case of Dickson v Commissioner of Valuation (NIVT5/14) and to the Schedule of outstanding works and photographs of the Subject Property in that case in which the Tribunal had determined that the works in that case could be completed within the three month time scale stipulated in the Completion Notice. It was the Commissioner's submission that the Subject Property was in no lesser an incomplete state than the Subject Property in the Dickson case and that the Subject Property could therefore have been completed within three months. It was therefore submitted on behalf of the Commissioner that the Subject Property had been correctly entered into the Valuation List with effect from 16<sup>th</sup> February 2012 and that upon the expiry of the Developer's exclusion in August 2015, the subject property became liable to vacant Rates from August 2015.
- 6.2 It was submitted on behalf of the Commissioner that the Capital Value of the Subject Property had been correctly assessed in accordance with the 1977 Order and in particular that the statutory assumptions as set out in Schedule 12 had been correctly applied. In particular, Mrs Jackson referred to the assumption that "the Subject Property is in an average state of internal repair and fit out, having regards to the age and character of the hereditament and its locality" in accordance with paragraph 12 (1) of Schedule 12. As such it was her submission that the Capital Value of the Subject Property did not reflect the shell state of its interior.
- 6.3 On behalf of the Commissioner it was also submitted that in accordance with paragraph 7 (2) of Schedule 12 to the 1977 Order regard had been

had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances as the Subject Property. Mrs Jackson contended that the comparable hereditaments referred to in the Respondent's Presentation of Evidence supported a confirmation of the Capital Value of the Subject Property as at £260,000.00. All of the said comparables were detached two storey dwellings in rural locations and all were constructed between 2003 and 2015.

- 6.3.1 The property at 51A Boleran Road, Garvagh had a GEA of 450 m<sup>2</sup> with a garage of 49 m<sup>2</sup>. As such, both the dwelling and the garage were larger than the subject property. It was submitted that this was reflected in its higher Capital Value of £320,000.00.
- 6.3.2 38 Boleran Road, Garvagh was a somewhat smaller dwelling with a GEA of 295 m<sup>2</sup> and a garage of 71 m<sup>2</sup>. Mrs Jackson was questioned by the Tribunal with regard to the garage specifically and confirmed that the garage did not include any habitable space. The Capital Value of this comparable was £240,000.00.
- 6.3.3 90 Carhill Road, Garvagh was a dwelling with a GEA of 367 m<sup>2</sup>. Its photograph appeared to indicate that it was under construction and that it had a garage although no particulars with regard to the GEA of the garage were provided. In response to questions from the Tribunal, Mrs Jackson's evidence was that this comparable had not been assessed as having a garage.
- 6.3.4 84 Kurin Road, Garvagh was a dwelling with a GEA of 337 m<sup>2</sup> and a garage of 53 m<sup>2</sup>. This was a property with a dwelling only slightly smaller than the Subject Property and a garage slightly larger. Its Capital Value was £260,000.00.
- 6.3.5 51 Ballynameen Road, Garvagh comprised a dwelling with a GEA of 320 m<sup>2</sup> and a garage of 47.2 m<sup>2</sup> and had a Capital Value of £250,000.00.
- 6.4 All of the comparable properties put forward by the Commissioner had unchallenged Capital Values. It was submitted on behalf of the Commissioner that the comparables demonstrated that the Capital Value of the Subject Property was "in tone" with the comparable properties in the Valuation List.

## **7. The Tribunal's Decision**

- 7.1 The Tribunal acknowledges the courteous and co-operative approach of both parties to the preparation and presentation of those submissions to the Tribunal.
- 7.2 With regard to the unfinished condition of the Subject Property whilst the Tribunal acknowledges the Appellant's particular logistical and financial circumstances concerning the construction of the property, the Tribunal is bound by the legislation and the only question for determination by the Tribunal is whether the Subject Property is reasonably capable of having been completed within three months of the Completion Notice being served. The Appellant's personal and financial circumstances are not a matter which the Tribunal is permitted to take into account under the

- legislation. It was accepted on behalf of the Appellant that a Contractor could probably complete the Subject Property within a period of three months. Accordingly, on the balance of probabilities, the Tribunal determined that the property was capable of being completed within three months of the service of the Completion Notice and therefore that the Subject Property had been correctly entered into the Valuation List.
- 7.3 Turning to the matter of the Capital Value of the Subject Property, Article 54 of the 1977 Order enables an Appellant to appeal to the Tribunal against the decision of the Commissioner as to Capital Value of a Subject Property. In this case the Capital Value has been assessed at the AVD at a figure of £260,000.00. On behalf of the Commissioner it has been contended that that figure is fair and reasonable in comparison to other properties and the statutory basis for valuation has been referred to and especially 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 articles 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”*. It is therefore up to 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 The Tribunal is satisfied on the evidence that the initial assessment as to Capital Value has been carried out in accordance with the prescribed manner as set out Schedule 12 of the 1977 Order. The evidence submitted as to comparables and the submissions on behalf of the Commissioner lead the Tribunal to conclude that the correct statutory approach has been followed.
- 7.6 The Tribunal then turns to consider whether there is sufficient evidence in the arguments made by the Appellant to displace the statutory presumption.
- 7.7 The Tribunal carefully considered all of the evidence and submissions of the parties with regard to the comparable properties drawn to the attention of the Tribunal. These included not only the comparable properties in the Respondent’s Commissioners Presentation of Evidence but also the property at Millfield House, 44 Boleran Road referred to on behalf of the Appellant. However the Tribunal was not persuaded that the property at Millfield House, 44 Boleran Road was a suitable comparable as it was a much smaller dwelling than the Subject Property or any of the other comparable properties being considered and was a detached bungalow whereas the Subject Property and all of the other comparable properties were detached two storey dwellings.
- 7.8 Whilst the five comparable properties put forward on behalf of the Commissioner for consideration were all helpful, the Tribunal considered that on the balance of probabilities the properties at 38 Boleran Road, Garvagh and 90 Carhill Road, Garvagh were less helpful than the other comparables. After careful consideration however the Tribunal was of the

view that the comparables at 51A Boleran Road, Garvagh, 51 Ballynameen Road, Garvagh and, in particular, 84 Kurin Road, Garvagh were supportive of the Commissioner's submissions in support of a Capital Value of £260,000.00 for the Subject Property.

- 7.9 Having carefully considered all of the evidence and the respective submissions of the parties the Tribunal on the balance of probabilities was not satisfied that the Appellant's evidence was sufficient to displace the statutory presumption contained in Article 54 (3) of the 1977 Order as amended.
- 7.10 Having carefully considered all of the evidence, the Capital Values of the Subject Property and the comparable hereditaments and having carefully considered the weight to be given to all of the evidence and the submissions of the parties, the Tribunal is of the view that the appropriate Capital Value Assessment of the Subject Property at the AVD of 1<sup>st</sup> January 2005 is £260,000.00 as it presently appears in the Valuation List.
- 7.11 Accordingly, the unanimous Decision of the Tribunal is that the Appeal against the Certificate of Valuation of the Commissioner of Valuation for Northern Ireland dated 16<sup>th</sup> February 2016 is dismissed.

**Mr Alan Reid, Chairman**

**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties: 6 April 2017**