

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: 17/16

HUGH ROGERS - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr T Hopkins FRICS and Dr P Wardlow

DECISION

The unanimous decision of the tribunal is that the 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 appellant requested an oral hearing. The matter was listed for hearing at Belfast on 5 July 2017. The appellant, who resides in London, had a short time before the hearing commencement requested a postponement of the hearing. However, upon being contacted by the tribunal and afforded this facility, the appellant was content for the appeal hearing to be disposed of by telephone conferencing, with the appellant representing himself and with the respondent being represented at the hearing venue. In conducting the hearing, the tribunal took steps to ensure that all relevant evidence and information was clearly communicated between the respective parties and the representative and with the members of the tribunal. At hearing, the respondent was represented by Mr Gareth Neill MRICS.

2. The appellant, by Notice of Appeal received by the Office of the Tribunal on 15 November 2016, appealed against the decision of the Commissioner of Valuation in a Valuation Certificate dated 19 October 2016, with an effective date of 1 April 2016, in respect of the valuation of a hereditament situated at 146 Mill Road, Mullartown, Annalong, County Down BT34 4RH (“the subject property”).

The Law

3. 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, as is normally the case, does not intend in this decision fully 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, for the reason that these provisions have been fully set out in many decisions of this tribunal which are readily available. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter. Perhaps of particular significance to this case is that reference shall be made to the Antecedent Valuation Date or “AVD” which is the date to which reference is made for the assessment of capital values in the Valuation List. Accordingly, until a further domestic property revaluation occurs, capital values are under the present regime notionally assessed as at 1 January 2005, that being the AVD for the purposes of the statutory domestic rating scheme.

The Evidence and Facts

4. The tribunal noted the papers in the matter and the documentation adduced in evidence, including evidence relating to the comparables (these being potentially comparable properties from which evidence of capital valuation may be drawn for statutory purposes) put forward in the matter. The tribunal heard oral evidence and submissions from the appellant and, on behalf of the respondent, from Mr Neill. The tribunal had before it the appellant’s Notice of Appeal to the tribunal (Form 3) and the following:-

4.1 The Valuation Certificate dated 19 October 2016.

4.2 A document dated 28 February 2016 entitled "Presentation of Evidence" prepared on behalf of the Commissioner as respondent by Ms Clare Curran MRICS and submitted to the tribunal. It had been made clear on behalf of the respondent in advance of the hearing that Ms Curran was unable to attend the tribunal hearing and the tribunal agreed to admit the Presentation of Evidence report, which was introduced into evidence by the respondent's representative without objection from the appellant.

5. The subject property is located at 146 Mill Road, Mullartown, Annalong, County Down BT34 4RH. It consists of a privately-built single storey cottage dwelling, described in the Presentation of Evidence as being constructed pre-1919 and which is stated to be in average repair and located in a rural location, with a garden. The appellant is understood to be the ratepayer. The subject property was described as having habitable space of 105 m² and with a detached garage of 45 m². A few observations are perhaps necessary regarding the evidence adduced on behalf of the respondent. The tribunal, whilst noting that the appellant did not take issue with any of the above description, would have preferred a little further detail such as would normally be provided to the tribunal in such Presentations of Evidence. The tribunal would encourage a consistency of approach to evidence on the part of the respondent in such capital valuation appeals. This would be of considerable assistance to the tribunal and might obviate the necessity for matters to be adjourned in specific cases for want of sufficient evidence, or even the necessity for a site visit, with attendant delay and potential expense. In any event, in this matter there was just sufficient evidence and information provided, when viewed in the context of the specific issues of contention raised by the appellant in this appeal.

6. The rating history is that in March 2015 there was an internal request from Land and Property Services (LPS) to the District Valuer to check if the subject property should be retained in the Valuation List. No change was made to the List entry. In July 2016 an application was made to the District Valuer for a revision of the capital value on the contended grounds that the subject property was incapable of occupation. No change was made to the capital value. In September 2016 there was an application made to the District Valuer for a revision of the Valuation List on the contended

grounds that the capital value was too high. No change to the capital value was made. In October 2016 the District Valuer's decision was appealed to the Commissioner of Valuation. Upon review, the Commissioner of Valuation recommended a reduction in the capital value to £125,000, in line with comparable properties in the area. In November 2016 the decision of the Commissioner of Valuation was appealed to this tribunal.

7. The Commissioner's submission, as respondent, to the tribunal is that in arriving at the capital value assessment regard was had to the statutory basis of valuation and reference is made to schedule 12, paragraph 7, of the 1977 Order, as amended and thus it is submitted that regard was had, when valuing the subject property for the purpose of any revision of valuation list, to the capital values in the valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised. The comparables identified are set out in a schedule to the Presentation of Evidence, with further particulars given thereafter in respect of the comparables, including photographs. There are four comparables presented in total including the subject property, all being located in relatively close proximity. The respondent's submitted comparables consist of the subject property and in addition the following three properties, with summary particulars and some basic photographic evidence being provided in respect of each of these:-

- 9 Back Road, Annalong - privately built pre-1919 detached single-storey cottage, in rural location, with habitable space of 105 m², a garage of 19 m² and an outbuilding of 12 m², with a capital value of £120,000.
- 38 Mill Road, Annalong - privately built pre-1919 detached single-storey cottage, in rural location, with habitable space of 122 m², with a capital value of £135,000.
- 13 Mill Road, Annalong - privately built pre-1919 detached single-storey cottage, in rural location, with habitable space of 106 m² and an outbuilding of 7 m², with a capital value of £120,000.

There was no evidence that the capital value assessments in respect of any of these three foregoing hereditaments were under current challenge. At this distance from AVD the tribunal is entitled to draw evidential conclusions concerning "tone of the

list” from unchallenged capital valuations of comparable properties, to the extent to which any such might be evidentially comparable in the instant case, in place of specific sales evidence in reference to AVD.

THE SUBMISSIONS

8. The appellant in his Form of Appeal stated that he believed the actual valuation of the subject property should be "£50 – £70,000". He further stated as follows: "*The house needs to be demolished and rebuilt or completely refurbished to bring it into a habitable state. This updated valuation was done on the valuation from 2007 when house prices were astronomical as evidenced by their subsequent collapse to nearer fair value. This shows that the rates valuation wasn't right in the first place. I have been told by the LPS that the garden is not considered when valuing the house. But in effect it is the garden that brings the valuation anywhere near to £125,000. This is the crux of the matter and seems to me to be a contradiction and also grossly unfair*". In his oral submissions to the tribunal, the appellant further elaborated upon the foregoing and, having initially indicated that the subject property was not capable of occupation and having made what appeared to the tribunal to be a suggestion that the subject property was, perhaps, truly derelict, the appellant as the hearing progressed then appeared to resile from such a position. This latter would have been, in any event, in contradiction with the suggestion contained within the appellant's Form of Appeal that the actual valuation should have been "£50 – £70,000". The appellant indicated that he was not disputing that the subject property ought to be included in the Valuation List. At hearing, the appellant indicated that his primary challenge in this appeal (the "crux of the matter") was grounded upon the proposition that the subject property had a substantial garden. The appellant felt strongly that this garden, which he described as being large and mature, must have been reflected significantly in the assessment of the capital valuation, notwithstanding the position that had been articulated on behalf of the respondent that this was not so.

9. The tribunal explored in some detail with the appellant the foregoing submission. In the written submission made on behalf of the respondent and in oral argument, the respondent's representative, Mr Neill, addressed both the "AVD issue" and also the inclusion of the subject property in the Valuation List. The tribunal does not need to

address the second point as the appellant in the course of the hearing made a clear concession that he accepted that the subject property ought to be rated and thus that it was properly included in the Valuation List. Mr Neill, on behalf of the respondent, dealt with the two aspects of the appellant's challenge to the assessment of capital value. The first of these is what might be termed the "AVD issue". This involved the contention, articulated by the appellant in this case, that there was some manner of a distortion of the property market impacting upon sales values which has, accordingly, adversely impacted upon the capital valuation ascribed to the subject property.

10. This is an argument regrettably still quite frequently encountered in capital valuation appeals. It has been addressed in many decisions of this tribunal. A recent decision of the tribunal is the case of ***Branagh v Commissioner of Valuation [NIVT11/15]***. This case was indeed expressly referred to in the written submissions advanced on behalf of the respondent. In ***Branagh*** the tribunal explained that a proper understanding of the capital valuation regime focused upon the comparison of different hereditaments, all of which were equally assessed with reference to AVD values. In that case, as in this matter, the respondent's contentions directed the tribunal to the case of ***Dawkings (VO) v Ash Brothers & Heaton Ltd (1969) 2 AC 336*** in which case Lord Pearce stated: "*Rating seeks a standard by which every hereditament in this country can be measured in relation to every other hereditament. It is not seeking to establish the true value of any particular hereditament but rather its value in comparison with the respective value of the rest.*" There was a further reference made in ***Branagh***, as in this case by the respondent, to the cases earlier determined by this tribunal, ***Michael Ballantyne v Commissioner of Valuation [NIVT 16/14]*** and ***Gerard Heaney v Commissioner of Valuation [NIVT 74/12]*** which cases endorsed the foregoing principle as applicable to Northern Ireland rating law. Accordingly, it is hoped that the appellant (and any others reading this decision) shall comprehend that the statutory regime applied to the subject property is required to be applied to all domestic hereditaments upon an equal basis in accordance with the foregoing principle: "*not seeking to establish the true value of any particular hereditament but rather its value in comparison with the respective value of the rest.*" For this reason, the tribunal determines that the appellant's argument cannot be properly upheld.

11. Dealing then with what might be termed the "garden issue", the tribunal explored this with the respondent's representative. Here, Mr Neill indicated to the tribunal that in almost all cases there would be no consideration taken of any garden attaching to a hereditament. Mr Neill did admit that a garden could not, however, be entirely disregarded in every case, without exception. Nonetheless, he clarified that a garden would only be taken into account, in capital valuation terms, if it represented something very significant or quite exceptional. This would have to be something that would, of itself, have had a very significant influence upon capital valuation. However, the argument was presented for the respondent that there was no evidence in this case that any such impact was properly to be taken into account.

12. Examining the arguments, the tribunal observes an apparent contradiction between the appellant's proposition, on the one hand, that the subject property's garden must have significantly enhanced the capital value and, on the other hand, any evidence emerging from the comparables set forth in the respondent's Presentation of Evidence. The evidence to be gleaned from the comparables discloses nothing in terms of exceptionality concerning hereditament location or gardens. For this reason, there is nothing to account for these other properties being assessed at a capital valuation which is relatively proximate to that ascribed to the subject property. Far from supporting the appellant's submission, these other properties serve to detract from the weight of the submission. The evidence, indeed, effectively supports the respondent's submission that the capital value of the subject property is "in tone" with the Valuation List.

13. If one then examines these three properties, firstly, in the case of 9 Back Road, Annalong, this has generally similar characteristics and circumstances to the subject property, being a privately built pre-1919 detached single-storey cottage, set in rural location. In this instance there is habitable space of 105 m², which is the same as that of the subject property, together with a garage of 19 m² and an outbuilding of 12 m². In this instance the capital value is £120,000, being slightly lower but nonetheless quite close to the capital value ascribed to the subject property. Here, the difference may arguably be attributed to the larger garage serving the subject property. In the second case, 38 Mill Road, Annalong, again this has relatively similar characteristics and circumstances, with habitable space of 122 m² and with a capital value of £135,000. There is no garage, but the habitable space is larger than

the subject property and that very probably accounts for the difference in capital value of £10,000. In the third and final comparable, 13 Mill Road, Annalong, again this has relatively similar circumstances and characteristics to the subject property, with habitable space of 106 m² and an outbuilding of 7 m². Here the capital value is £120,000, that being slightly lower than the subject property, but accounted for by the small outbuilding. None of these comparables indicate that the assessment of the capital value of the subject property is significantly "out of tone"; the evidence and information serves effectively to support the assessment of the capital value of the subject property as being correct.

THE TRIBUNAL'S DECISION

14. Noting the evidence and the arguments advanced, the tribunal specifically takes into account the statutory presumption contained within the 1977 Order, Article 54(3), whereby any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown. As has been on many occasions remarked in decisions of this tribunal in order to succeed in an appeal, the appellant must either successfully challenge and displace that statutory presumption of correctness or perhaps the Commissioner's decision on appeal, objectively viewed, must be seen by the tribunal to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the capital value to an appropriate figure.
15. The tribunal examined the essential issue of whether or not the appellant had put forward sufficient challenge to the respondent's schedule of comparables and sufficient evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation ascribed to the subject property.
16. It must be mentioned that the appellant did allude to some other property which he owned which he stated demonstrated that the capital valuation of the subject property was incorrect. However, the appellant did not provide any address nor any other details. Accordingly the tribunal had no information upon which to reach any conclusions other than that available concerning the subject property and the comparables. All of the selected comparables have some degree of comparability and thus there is appropriate weight to be attached to any evidence emerging from

these. Without more, the tribunal is unable to uphold the appellant's contention that the capital value assessment in respect of subject property is incorrect, when applying the statutory principles of assessment of capital value. Accordingly, the tribunal's unanimous decision is that the appellant has not put forward sufficient evidence and argument to displace the statutory presumption of correctness in respect of the capital valuation applied to the subject property. For these reasons this appeal cannot succeed and the appeal is dismissed by the tribunal, by unanimous decision.

James V Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 26TH July 2017