

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: NIVT 20/18

KEVIN SMYTH – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr Brian Reid FRICS and Mr Peter Somerville

Date of hearing: 29 January 2020, Belfast

DECISION ON REVIEW

The unanimous decision of the tribunal is that there are no proper grounds made out by the appellant to enable the tribunal to review the decision of the tribunal issued on 13 November 2019 and thus the tribunal's decision is affirmed and the appellant's application for review is dismissed.

REASONS

Introduction

1. This is an application for review of a decision of this tribunal ('the decision') in respect of a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ('the 1977 Order'). The decision was issued to both parties by the Secretary of the Northern Ireland Valuation Tribunal ('the tribunal') on 13 November 2019.
2. The appellant, by letter ('the review letter') dated 28 November 2019 and received in the Tribunals Hearing Centre on 29 November 2019, requested a review of the decision of the tribunal.

3. The review was listed for hearing on 29 January 2020. Both parties appeared at the hearing of the application for review. The appellant attended in person and the respondent was represented by Mr Gary Humphrey and Mr James Martin.

The Law

4. The Valuation Tribunal Rules (NI) 2007 ('the Rules'), as amended provide at rule 21 as follows in respect of the review of any decision of the tribunal:

“21.-(1) If, on the application of a party or its own initiative, the Valuation Tribunal is satisfied that-

 - (a) its decision was wrong because of an error on the part of the Valuation Tribunal or its staff; (*the first ground*) or
 - (b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had good reason for failing to be present or represented; (*the second ground*) or
 - (c) new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; (*the third ground*) or
 - (d) the interests of justice require (*the fourth ground*)

the Valuation Tribunal may review the relevant decision.”
5. The nature of a review application of a decision of the tribunal is that the appellant has in the first instance to establish proper grounds upon which the tribunal might proceed to review the decision. If such grounds are not established then the matter cannot proceed to a review.
6. At the outset of the hearing the tribunal read out to the parties the grounds on which a tribunal might proceed to review the decision. At this stage it was indicated that the second ground did not apply in that both parties had appeared at the original hearing of the matter.

The Appellant's Submissions

7. The appellant submitted that there were several issues which grounded the application for review. The following is a summary of both the written and oral evidence given to the tribunal.
8. The appellant indicated that present day market value is used in other contexts, to value assets at a past date and that this method demonstrated sufficiently that there are significant and unexplainable inconsistencies in the capital values of the various properties referred to at the hearing and that these inconsistencies were sufficient to warrant the tribunal asking for explanations from the respondent which the tribunal failed to do.
9. The appellant indicated that his use of NI apartment price index and rateable valuation per square metre demonstrated sufficiently that there was a significant and unexplainable inconsistency in the capital value of the subject property and that this inconsistency was sufficient to warrant the tribunal asking for explanations from the respondent which the tribunal failed to do.
10. The appellant argued that the tribunal has relied on other valuations being unchallenged as being significant. He stated that this was not tenable. He considered that most people assume that the basis for rateable valuations are consistent and fair, which this appeal demonstrated was an incorrect assumption. Most people do not understand their appeal rights or the appeal process or would not be willing to or have the time to go through the process. The appellant contended that if the respondent wished to rely on this as evidence then he should have been required to produce evidence of the relevant rate payers' satisfaction with their valuations. The appellant states that for the tribunal to rely on this and use it as an influencing factor is accepting hearsay. The appellant further stated that he had contacted the other residents in his apartment block and received five responses from residents who did not understand

the process. Therefore, the appellant said that it was not a valid conclusion that the capital values had been accepted by these residents.

11. The appellant referred to the properties at Blaris Drive and the reliance that the tribunal placed on this evidence from the respondent. He stated that these are further away from the subject property than the Hillsborough Road properties. They are outside of the 30mph speed limit and have less in common with the subject property than the Hillsborough Road Mews development. The appellant contended that the respondent argued that having inaccurate valuations on different properties was in order provided that they are in different wards. This is not in accordance with the legislation and not a credible argument and demonstrates the irrelevance of the electoral ward argument.
12. The appellant stated that Hillsborough Road Mews apartments have been dismissed by the tribunal even though they have similar present day values. This is because they are in a different electoral ward and do not have a river view. The appellant argues that the legislation does not refer to electoral wards and nor would any other valuation activity take this into account. The appellant argues that the respondent presented factual errors at the original hearing. The appellant states that the Hillsborough Road Mews development is diagonally across the river from the subject property (a few hundred yards as the crow flies) rather than the 1.6 miles by road as stated by the respondent at the original hearing. The appellant accepts that Hillsborough Road Mews does not have river views but he states that the same river is directly behind it and both developments are protected from any future developments between them and the river and this is a common feature.
13. The appellant states that the tribunal has dismissed the Wallace apartments as comparables on the basis that they are in a different ward and this is not an influencing factor. The claim that they are on a busy street and therefore worth less than the subject property is untrue as shown by the current valuation which was similar to the subject property and for which evidence was provided and ignored by the tribunal.

14. The appellant in his written submissions further indicated that the respondent's argument that different wards result in different comparable properties is not in accordance with the legislation.

The Respondent's Submissions

15. Mr Martin, on behalf of the respondent, submitted that the subject property has been valued in tone with properties in similar state and circumstances in accordance with the legislation. Comparables used by the respondent included apartments in the same development as the subject property and also in Harryville Court, Lisburn and Blaris Drive, Lisburn. He submitted that there was sufficient evidence to support the valuation of the subject property with a capital value of £150,000.

16. The respondent indicated that reliance on apartment indices or price per square metre were not the basis for valuation for the purposes of the legislation.

17. Mr Martin indicated that in establishing comparable evidence the respondent had sought to find properties that are in a similar state and circumstance as the subject property. The search would commence with properties in the same ward but that if there are no such properties in the same state and circumstances as the subject then the respondent would look to properties in different wards. The issue was that the respondent sought to find properties in the same state and circumstances as the subject. Mr Martin stated that he had selected comparables in similar state and circumstances as the subject and these are in the same ward as the subject.

18. The respondent stated that the Blaris Drive properties were 0.83 miles from the subject and that this was used to set the capital value of the properties in Quay Meadows. These are smaller than the subject property and therefore have a smaller capital valuation of £135,000.

19. When queried as to why the respondent had not used the Hillsborough Road Mews apartment development as comparable evidence, the respondent stated that the subject was in a more desirable location, in a quiet cul-de-sac and that a hypothetical purchaser would pay more for the subject property.

The Tribunal's determination of the issues

20. As has been stated earlier, there are four possible grounds on which to base an application for a review of a decision of the Valuation Tribunal.

21. In respect of the second ground for review, that a party who was entitled to be heard at a hearing but failed to be present, had good reason for failing to be present or represented, both parties attended the original hearing of this matter and therefore this ground does not apply to this case.

22. At this point it is worth pointing out that the review procedure is not intended to be a second bite at the cherry, for an appellant who feels he has not submitted his best case to the tribunal to have another go.

23. In the first of his submissions the appellant submits that using present day market values to establish an open market value at a past date is a common means to value assets and is used in other contexts. He argues that this method demonstrated sufficiently that there are significant and unexplainable inconsistencies in the capital values of the various properties referred to at the hearing and that these inconsistencies were sufficient to warrant the tribunal asking for explanations from the respondent which the tribunal failed to do.

24. In *Crawford v Commissioner of Valuation*, a previous decision of the Valuation Tribunal, the tribunal stated in relation to Rule 21(1)(a):

“The review procedure under this head is designed to correct obvious and fundamental flaws which arose because of human error, errors which when pointed out, are self-evident, patent and objectively, clearly erroneous. It is impossible to conjure up an exhaustive list of the type and nature of errors, which may be relevant, but if a

Statement of Case failed to be included or dealt with at an appeal or if the body of one decision somehow became attached to the title of a different decision, such are the types of error which would entitle any party, or the NIVT of its own initiative, to seek a review.”

25. Applying this first ground for review, to this submission forwarded by the appellant, there is nothing in this submission that comes under the ground of obvious and manifest error in the decision.

26. In relation to the third ground for review – that new evidence to which the decision relates has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then, in respect of this submission the application for review on this ground must fail as well. These issues were raised at the hearing of this matter and explored by both the appellant and the respondent and taken into account by the tribunal in reaching its decision.

27. The question of where it would be appropriate to review a matter under the final ground in the ‘interests of justice’ has been considered by the tribunal in other cases, notably in *Cairns v Commissioner of Valuation*. In that case the President of the Valuation Tribunal concluded:

“In the absence of any identified authority within the tribunal’s own jurisdiction being drawn to the tribunal’s attention, the tribunal is of the view that the ‘interests of justice’ ground ought properly to be construed fairly narrowly; that certainly appears to be the accepted practice in other statutory tribunal jurisdictions. Thus the ‘interests of justice’ ground might, for instance, be seen to apply to situations such as where there has been some type of procedural mishap.... Generally it is broadly recognised that the ‘interests of justice’ in any case must properly encompass doing justice not just to the dissatisfied and unsuccessful party who is seeking a review but also to the party who is successful. Further, there is an important public interest in finality of litigation. The overriding objective contained within the tribunal’s rules also bears upon the matter.”

28. In the light of this, there is nothing in the applicant’s submission that would warrant a review of the decision on this ground.

29. The appellant indicated that his use of NI apartment price index and rateable valuation per square metre at the original hearing demonstrated sufficiently that there was a significant and unexplainable inconsistency in the capital value of the subject property and that this inconsistency was sufficient to warrant the tribunal asking for explanations from the respondent which the tribunal failed to do.
30. The issue of the use of apartment price indices and rateable valuation per square metre were addressed in the hearing. The tribunal has concluded in this case, following other decisions of this tribunal in other cases that these respectively do not form the correct basis of valuation under the legislation.
31. In the light of this there is no ground for a review on the basis of the first ground for review that there is nothing in this submission that comes within the heading of an obvious and manifest error. This is not new evidence, the arguments in relation to these issues having been fully rehearsed at the original hearing. Therefore, the applicant fails on the third ground as well. Neither are there any grounds for review on the fourth 'interest of justice' ground.
32. In relation to the third possible ground for review, that the respondent relied on uncontested valuations in the same apartment block as the subject. This ground too must fail. The statutory basis of valuation states (in Schedule 12 to the Rates (NI) Order 1977 (as amended)) that in establishing capital valuation 'regard shall be had to the capital values in the valuation list of comparable hereditaments in the same state and circumstances'.
33. It is true that there can be a variety of reasons why a rate payer may not contest the capital valuation of their property. However, the legislation states that regard may be had to comparable hereditaments in the same state and circumstances. This means that the respondent is entitled to list as comparable evidence those properties that have unchallenged valuations.

34. The appellant states that if the respondent wished to rely on this comparable evidence as evidence then the respondent should have been required to produce evidence of the relevant rate payers' satisfaction with their valuations. The tribunal would also point out that article 54(3) of the Rates (NI) Order 1977 (as amended) states that on an appeal under this Article [to the Valuation Tribunal] 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 it is up to the appellant to provide sufficient challenge to the Commissioner's schedule of comparable evidence to displace this presumption. Therefore, there is no ground for review on this basis of the first ground for review. This also is not new evidence and furthermore it is not in the interests of justice to review the tribunal's decision on this ground.
35. In relation to the last ground in his application for review, the appellant seeks to rely on the fact that reference was made in the tribunal's decision to certain properties being in a different ward or in the same ward as the subject. The tribunal would point out that it based its decision by weighing up the comparable evidence submitted by the appellant and the respondent respectively.
36. In its decision the tribunal concluded that it preferred the comparables presented by the respondent, namely 8, 5 and 1 Quay Meadows. These are in the same development as the subject property and are the same size as the subject and have the same capital valuation (£150,000). The tribunal also considered that the capital valuation of the subject property was supported by the comparables forwarded by the respondent at Blaris Drive, Lisburn. The tribunal accepts the clarification by the respondent that reference to a ward is merely a reference to the location of the property which is one of the factors in establishing if a property sought to be used as a comparable property is in a similar state and circumstance to the subject property. Therefore, there is no ground to review the tribunal's decision on this ground. Again, the appellant does not refer to new evidence as these issues were rehearsed at the original hearing. Furthermore, it is not a ground for review on the interest of justice ground.

Conclusion

37. The tribunal, having considered this matter in detail, is satisfied that the appellant has not made out any of the grounds justifying relief pursuant to Rule 21 of the Valuation Tribunal Rules and it is the unanimous decision of the tribunal that its original decision remains unaffected and the application for a review is dismissed.

Signed: Mr Charles O'Neill, Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 13th May 2020