LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

LANDS TRIBUNAL RULES (NORTHERN IRELAND) 1976

RATES (NORTHERN IRELAND) ORDER 1977

IN THE MATTER OF AN APPEAL

VR/12/2016

BETWEEN

McCALLS OF LISBURN LIMITED – APPELLANT

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Part 2 Costs

Re: 7-15 Market Street, Lisburn

Lands Tribunal – Henry M Spence MRICS Dip Rating IRRV (Hons)

Background

1. McCalls of Lisburn Limited ("the appellant") had challenged the Commissioner of Valuation's ("the respondent") Net Annual Value ("NAV") assessment of £26,500 on their premises at 7-15 Market Street, Lisburn ("the reference property"). The appellant had sought an NAV assessment of £20,500.

2. The appeal was heard before the Tribunal on 9th November 2017 and at paragraph 49 of its decision the Tribunal concluded:

> "The Tribunal allows the appeal and directs that the NAV of 7-15 Market Street in the 7th Valuation List be altered to £22,250 …"

3. The parties have been unable to agree on the allocation of costs in the appeal and this is the matter to be decided by the Tribunal.

Procedural Matters

4. It was agreed that the issue of costs should be dealt with by way of written representations. Ms Elizabeth Ferguson BL provided a submission on behalf of the appellant. Mr Philip Henry BL provided a submission on behalf of the respondent.

Position of the Parties

5. Ms Ferguson BL submitted that, in the subject reference, the Tribunal should not depart from the general rule that "costs follow the event" and the appellant, as the successful party, should receive its costs in full.

6. Mr Philip Henry BL advised the Tribunal that, by way of letter dated 8th March 2018, the respondent's solicitors had offered to pay 50% of the appellant's reasonable costs for the appeal (but not the preceding costs).

The Law

7. Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976 provides:

> "(1) Except in so far as section 5(1), (2) or (3) of the Acquisition of Land (Assessment of Compensation) Act 1919 applies and subject to paragraph (3) the costs of and incidental to any proceedings shall be in the discretion of the Tribunal, or the President in matters within his jurisdiction as President.
>
> (2) If the Tribunal orders that the costs of a party to the proceedings shall be paid by another party thereto, the Tribunal may settle the amount of the costs by fixing a lump sum or may direct that the costs shall be taxed by the registrar on a scale specified by the Tribunal, being a scale of costs for the time being prescribed by rules of court or by county court rules."

8. In Oxfam v Earl & Ors [1995] BT/3/1995 the Tribunal clarified how it should exercise its discretion (at page 8):

> "The Tribunal must exercise that discretion judicially and the starting point on the question of costs is the general presumption that, unless there were special circumstances, costs follow the event, i.e. that in the ordinary way the successful party should receive its costs."

Authorities

9. The Tribunal was referred to the following authorities:

- Oxfam v Earl & Ors [1996] BT/3/1995
- Fijitsu Telecommunications Europe Ltd v Brunswick Ltd [2003] BT/90/2002
- Cassidy v Northern Ireland Electricity Ltd (Costs) [2016] R/49/2011
- Elias Altrincham Properties v Commissioner of Valuation (Costs) [2016] VR/15/2011
- Re JR 78 [2017] NIQB 93

Texts

10. The Tribunal was also referred to the following texts:

- Rules of the Court of Judicature in Northern Ireland [1980] (as per Purfleet Farms Ltd v Secretary of State for Transport, Local Government and the Regions [2002] EWCA 1430). Order 1 Rule 1.

Discussion

11. It was clear that the appellant was the successful party; the Tribunal had reduced the NAV of the reference property from £26,500 to £22,250 and under the general rule, as detailed in Oxfam, the appellant should be awarded its costs in the appeal.

12. In Oxfam, however, the Tribunal also directed, under the heading of "Special Awards":

"The next question for a Tribunal is whether there were special circumstances which would warrant a departure from that general rule. But these must be circumstances connected with the proceedings, for example, to reflect an unsuccessful outcome on a major issue."

13. Were there special circumstances in the subject reference which would warrant a departure from the general rule? In the original hearing there was a legal issue as to whether the appellant's appeal constituted a revision of the Valuation List (as submitted by Mr Henry BL) or whether it was a challenge to the General Revaluation (as submitted by Ms Ferguson BL). The Tribunal found in favour of Mr Henry BL and decided that the appeal before the Tribunal constituted an "application for revision" of the Valuation List.

14. Mr Henry BL submitted that the first point made in Oxfam was that the Tribunal should decide if there was an issue of fault or principle. He considered that the revision v General Revaluation issue was a matter of statutory interpretation and as such was clearly a point of principle. In support he referred the Tribunal to paragraph 10 of Elias Altrincham:

"10. The Tribunal agrees with the respondent, this was not a simple valuation case. The appellant had sought to challenge the interpretation of the phrase 'in the same state and circumstances', as outlined in paragraph 2.-(1) of Schedule 12 Part 1 to the Rates (Northern Ireland) Order 1977 and the subsequent application of the Tone of the List rule. The Tribunal therefore agrees with the respondent, this was not 'no fault or principle' litigation and there were no special circumstances in the subject reference to depart from the general rule that the winner should be awarded its costs."

15. In summary Mr Henry BL submitted that the revision v General Revaluation point, in which the respondent was successful, was an issue of "fault or principle and a "special circumstance" which warranted a departure from the general rule.

16. The basis of the appellant's appeal was that the NAV of £26,500 was "considered too high in all the circumstances". Ms Ferguson BL asked the Tribunal to note that in the summary of its

judgement the Tribunal simply stated "the Tribunal allows the appeal". She considered, therefore, that the case should be treated as a whole rather than divided into separate issues.

17. Ms Ferguson BL referred the Tribunal to Cassidy in which Mr Hunt QC argued that "the claimant had been successful in her case to the extent that she had won the legal argument that she was entitled to compensation, which the respondent had denied her". In those circumstances the Tribunal awarded the claimant her full costs. The Tribunal notes, however that this case is the subject of an appeal to the Northern Ireland Court of Appeal and the outcome in still awaited.

Conclusion

18. The Tribunal agrees with Mr Henry BL, the issue of revision v General Revaluation was a major legal point and a matter of statutory interpretation. This issue had never previously been argued before the Tribunal and the outcome will have an impact on the conduct of future rates appeals before this Tribunal.

19. The Tribunal considers this issue to be a "special circumstance" which warrants a departure from the general rule that "costs follow the event".

20. The Tribunal directs that the respondent should pay 50% of the appellant's costs in the appeal, as suggested by Mr Henry BL. Such costs to be taxed if not agreed.

21. There were other issues considered in the appeal including the correct application of tone of the list, the correct Zone A pricing to be applied, the relevance of the rental evidence and the correct end allowance to be applied. In the circumstances of the subject reference the Tribunal considers these to be "no fault or principle" valuation issues which would not warrant a departure from the general rule.

Date from which Costs are to be Paid

22. The Tribunal refers to the following extract from Hanna Brothers v The Commissioner of Valuation [2012] VR/12/2010:

> "22. Both Mr Shaw QC and Mr Rountree referred to the approach of the Tribunal as discussed in Brooks v NIHE [2009] and agreed that the core issue was whether or not the matter had reached the stage of contentious litigation.
>
> 23. The Tribunal is not persuaded that in Rating cases generally or in the particular circumstances of this appeal, there was any reason to treat, as the trigger for treatment as contentious litigation:
>
> a. the lodging of the appeal with the Tribunal; or
>
> b. employing an expert after lodging the appeal."

23. In the subject reference the respondent had offered to pay "50% of the appellant's reasonable costs for the appeal (but not preceding costs)". The Tribunal considers this to be fair and reasonable in the circumstances of the subject reference.

ORDERS ACCORDINGLY

30th May 2018

Henry M Spence MRICS Dip.Rating IRRV (Hons)
LANDS TRIBUNAL FOR NORTHERN IRELAND