LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

IN THE MATTER OF AN APPEAL

VR/15/2000

BETWEEN

ROBERT S ANDERSON - APPELLANT

AND

THE COMMISSIONER OF VALUATION - RESPONDENT

Lands Tribunal - Mr Michael R Curry FRICS IRRV MCI.Arb

Belfast - 26th July 2000

This was an appeal against a valuation for rating of a recently built chalet bungalow at 3 Bryansburn Gardens, Bangor, County Down. The Appellant and occupier, Mr Robert Anderson, said that the location was poor - an infill site, between the backs of houses on the Bryansburn Road and Farnham Park - and the road (for convenience only- 'the lane-way') to his house was poor. The expert for the Commissioner of Valuation said he had, in the basic pricing, reflected the "lack of profile due to the location of the house" and made an end allowance of 10% to reflect the "road surface/access problem".

Ms Emma Haughey appeared on behalf of the Commissioner and called Mr Stephen Fay, an experienced Chartered Surveyor, to give expert evidence. The Appellant, Robert Sangster Anderson appeared in person and gave evidence.

In essence, valuations for rating are estimates of rental value but the domestic part of the Valuation List has its roots in the letting market of more than a quarter of a century ago. Factors that may have a significant impact in today's market may have carried the same or very different weight at that time. In consequence the identification of the factors and their effect on value is generally best based on analysis of comparable properties in the 'hypothetical letting market' as illustrated by that List and a reasonably robust approach is needed.

At the Hearing, Mr Anderson reluctantly accepted that the detailed analysis of the comparables put forward on behalf of the Commissioner amounted to overwhelming evidence that the level

of pricing adopted for his property was broadly correct. However, Mr Anderson remained firmly of the opinion that the allowances for these disabilities affecting his property were insufficient.

The question of whether or not the allowances were fair was primarily an issue of expert opinion and there was only one expert witness before the Tribunal. Without an expert in support, it is difficult for an appellant to successfully challenge the statutory presumption that the entry in the list is correct (Article 54(2) of the Rates (NI) Order 1977) and have some other figure substituted. But, it is not and should not be impossible to do so. To succeed, in this appeal, the Appellant would need to persuade the Tribunal that:

1. the expert was incorrect in his assessment of the extent of the disabilities affecting the property, and/or
2. had not properly analysed the evidence about other properties in the List and
3. a correct assessment and proper analysis not only **could** lead to a different conclusion, but also that the Tribunal **should** prefer that other conclusion.

The lane-way was a cul-de-sac off the Bryansburn Road, a major urban, arterial road. From its junction, the lane-way passed between two large houses and then turned sharply left to pass behind the houses on the main road. Just past the bend, on the right, a new dwelling had been completed (No 10) and two others were under construction. Continuing along behind the houses on Bryansburn Road there was vacant ground on the right. On the left, another lane provided a second access to Bryansburn Road. Continuing on, one came to Mr Anderson's dwelling and beyond that the lane-way finished at two other dwellings which Mr Anderson informed the Tribunal dated from the 1880's, possibly converted from stables.

Mr Anderson described Bryansburn Gardens as a roughly surfaced lane-way, an old road that had been allowed to deteriorate. Maintenance in recent years had been minimal. There were potholes and it could be muddy. It was a private road and although there was a prospect that part of it (from the main road to where the dwellings were being built) might be brought up to modern standards and adopted by Road Service, but there was little or no prospect of that happening to the remainder. It appeared that the lane-way had been begun in the 1940s but never finished nor maintained.

Mr Anderson said that large vehicles either could not or would not come up the lane-way because they could get into difficulties when reversing. Vehicles used his driveway to turn and so he had to keep his gates closed.

Although Mr Fay had not encountered muddy conditions, he accepted the “access difficulties” and his assessment of the quality of the lane and its surface was not too different from that of Mr Anderson.

Mr Anderson invited the Tribunal to travel by car over the lane-way. The Tribunal did so, found the potholes, noted the conditions which would create difficulties for pedestrian as well as vehicular traffic and accepts that there were significant access difficulties.

The only expert opinion before the Tribunal was that of Mr Fay, who was an employee of one of the parties (the Commissioner of Valuation) and, in view of his pivotal role, it is appropriate that the Tribunal consider potential bias in his evidence.

He submitted a précis of evidence, as required by the rules, and also gave evidence under oath. In his written evidence he confirmed that he had complied with the strict requirements of his professional body to put his duty to the court above his duty to his employer. His oral responses to questions from the Appellant and the Tribunal were generally consistent with his written evidence. There was some minor discrepancy, between his written and oral evidence, in his explanations for the difference in pricing between No 10 Byransburn Gardens and No 3 - the extent to which it was to do with size as opposed to “lack of profile”. However, bearing in mind the nature of the two locations and the difficulty in distinguishing between the effect of “lack of profile” and the “access problem” elements, the Tribunal does not regard the shift of emphasis as materially detracting from his integrity and, in consequence, the weight to be attached to his evidence as a whole.

The Tribunal is satisfied that he understood his duty to the Court and that he had directed his mind to the issues in an impartial manner with a view to assisting the Tribunal rather than seeking to support the case of his employer.

There was a difference of opinion about the usefulness of the second but closer access because of its unsatisfactory junction with the main road. However there is no need for the Tribunal to decide the issue for the following reasons. Mr Anderson put to Mr Fay the proposition that, as 10% had been allowed for the access difficulty to No 10 Bryansburn Gardens but the distance to be travelled along the lane-way to his own house was much greater, a more generous allowance would be appropriate. Mr Fay informed the Tribunal that the length of the unmade lane-way to the house was not a factor affecting the amount of the allowance. For example, if the lane-way was brought up to adoption standards for part of its

length, so as to service the new development, that would not affect the amount of the allowance. On the evidence, the Tribunal accepts that to be the tone of the list in that regard.

Mr Fay had valued the subject house of 269 square metres at a base pricing of £1.90 a square metre giving £511. To this he had added for oil fired central heating and a garage to give a total of £583 and from this he deducted 10% for the road surface and access problems giving a net valuation of £525.

Mr Fay included a number of comparables in his evidence and considered that a clear pattern emerged which reflected the relative merits of the properties, and that the subject had been valued within this pattern with due cognisance of its cul-de-sac position. He said his pricing fully reflected the Appellant's concern about the lack of profile due to the location of the house but also reflected the benefits of a cul-de-sac position in terms of lack of traffic, noise and associated disruption.

He considered that No 10 Bryansburn Gardens had similar access problems. He analysed No 10 Bryansburn Gardens as 226 square metres at a base pricing of £1.95 a square metre giving £440 to which he had added for oil fired central heating to give a total of £503. From this he had deducted 10% for access problems giving a net valuation of £453.

In his written evidence Mr Fay attributed the slight difference in base pricing between No 10 and the subject (5p per square metre) as reflecting the better siting of No 10 as opposed to the "lower profile" of No 3. However, in oral evidence, he accepted that the differences in sizes also played a part.

Mr Fay accepted there were access difficulties to the subject but considered that the allowance of 10% for the state and condition of the access along the lane-way was fair and appropriate.

In closing Ms Haughey submitted that the evidence showed that the differential in pricing fully reflected the appropriate factors, size, profile to main road, privacy etc. She submitted that the 10% allowance fully reflected the access difficulties as described and, by way of example, referred to Kerr v Commissioner of Valuation VR/17/1988 where the roads were actually worse, it seemed, and the allowance approved by the Tribunal was 8%.

Having inspected the lane-way and the premises and having considered the largely undisputed factual evidence the Tribunal concludes that Mr Fay was fair and correct in his assessment of the disabilities affecting the property (the factual circumstances to be taken into account).

There could have been more transparency in his analysis of the effect of “lack of profile”, but the Tribunal accepts that, considered in isolation, the effect on the hypothetical rent was small and Mr Fay had taken the relevant factors into account. There was nothing in the evidence that would lead the Tribunal to conclude he had incorrectly analysed the evidence about other properties in the List or otherwise arrived at an incorrect conclusion in regard to modest net adjustment, reflected in the base pricing, to the extent that the poor location could be distinguished from the impact of the long lane-way.

Although there were minor differences between the opinions of Mr Anderson and Mr Fay on the detail of the access problems, bearing in mind the evidence that the length of lane was not generally a factor effecting the degree of allowance, the Tribunal finds that Mr Fay’s conclusions were based on a correct assessment and proper analysis. The Tribunal is not persuaded that it ought to prefer another conclusion. His allowance of 10% has not been shown to be incorrect or unfair.

For these reasons the appeal must fail but, it may be of comfort to Mr Anderson to have learnt that if, in the future, the lane-way is brought up to adoption standards for only the part of its length necessary to service the new development (as might reasonably be expected shortly) that will not affect his allowance.

ORDERS ACCORDINGLY

28th September 2000

Mr M R Curry FRICS IRRV MCI.Arb
LANDS TRIBUNAL FOR NORTHERN IRELAND

<u>Appearances</u>:-

Appellant in person.

Mrs Emma Haughey for the Respondent.