LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964

RATES (NORTHERN IRELAND) ORDER 1977

IN THE MATTER OF AN APPEAL

VR/15/2011

BETWEEN

ELIAS ALTRINCHAM PROPERTIES – APPELLANT

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: Units B & C, 5 Hillmans Way, Coleraine

Lands Tribunal - Mr M R Curry FRICS Hon.Dip.Rating

Background

1. This appeal concerns the net annual value ("NAV") for rating purposes, in accordance with the Rates (NI) Order 1977 ("the 1977 Order"), of a hereditament known as Units B & C, 5 Hillmans Way, Coleraine ("the subject").

2. Units B & C, 5 Hillmans Way were the residue of a sale of part of a larger hereditament. Accordingly, in 2007 the District Valuer revised the NAV, attributing £106,500, out of £149,000 for the larger hereditament, to the subject. In 2010, the District Valuer reduced the NAV to £96,000 "to reflect NAVs of similar properties". The ratepayer appealed to the Commissioner of Valuation but, in 2011, he declined to make any change. The ratepayer promptly appealed to this Tribunal.

3. Units B & C were interconnected and comprised 5,667m^2 of floor space with 177m^2 of ancillary stores. Block B had a pitched roof and uninterrupted floor space; Block C had a flat roof supported by steel stanchions. Access to Block B was from the side; to Block C from the rear. Both were constructed around 1969/1970. There was a sprinkler system.

4. The subject was vacant and on the market to let.

Procedural Matters

5. The Tribunal received written and oral expert evidence from Mr Gareth Neill, an experienced Chartered Surveyor, and from Mr Stephen Elias, the managing partner in Elias Altrincham Properties (the appellant), who had some 25 years of experience in

the property business, which including that of operating 6 other business parks, with more than 60 tenants.

6. The Tribunal also received copy email correspondence between Mr Elias and Mr Henry Taggart - a local chartered surveyor and commercial estate agent.

7. The Tribunal received written submissions from Mr Elias and, on behalf of the Commissioner, Mr Stephen Shaw QC.

8. The Tribunal has viewed the subject.

Positions

9. Mr Elias suggested that the NAV should be reduced from £96,000 to about £50,000. Mr Shaw QC suggested there should be no change.

Discussion

10. The Tribunal was referred to:

- The Rates (Northern Ireland) Order 1977;
- The Planning (Use Classes) Order (Northern Ireland) 2004;
- Ladies Hosiery and Underwear Ltd v West Midland Assessment Committee [1932] 2 KB 679;
- Thomas Carvill v Commissioner of Valuation [1966] VR/52/1965;
- Rosemary Wine Markets Ltd v Commissioner of Valuation [1987] VR/52/1985
- Lofty Inns Ltd v Commissioner of Valuation [1990] VR/31/1986;
- McKeown Vintners Ltd v Commissioner of Valuation [1991] VR/9/1985;
- The Trustees of Glenkeen Orange Hall v Commissioner of Valuation [1994] VR/31/1993; and
- A-Wear Ltd v Commissioner of Valuation [2003] VR/3/2001.

11. From time to time, the Commissioner of Valuation publishes a new valuation list containing a general revaluation of all non domestic hereditaments in Northern Ireland ("the List"). The relevant List was published in 2003. The net annual value of any hereditament in a new List is ascertained by reference to an antecedent valuation date, but on the assumption that the hereditament was in the same state and circumstances as at the time when the List comes into force. The relevant antecedent valuation date was in 2001. The List is regularly revised by District Valuers e.g. to include a new hereditament.

12. The basis of valuation is set out in schedule 12 of the 1977 Order and the general rule is in Part 1, which provides, so far is applicable:

> "1. Subject to the provisions of this Schedule, for the purposes of this Order the net annual value of a hereditament shall be the rent for which, one year with another, the hereditament might, in its actual state, be reasonably expected to let from year to year, the probable average annual cost of repairs, insurance and other expenses (if any) necessary to maintain the hereditament in its actual state, and all rates, taxes or public charges (if any), being paid by the tenant.
>
> 2.—(1) Subject to sub-paragraph (2), in estimating the net annual value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the net annual values in that list of comparable hereditaments which are in the same state and circumstances as the hereditament whose net annual value is being revised.
>
> (2) Sub-paragraph (1) shall not apply to any hereditament for whose valuation special provision is made by or under Part IV or any of the succeeding Parts of this Schedule, or to any hereditament whose net annual value falls to be ascertained by reference to the profits of the undertaking or business carried on therein."

Briefly, the first paragraph requires an open market rental value to be assessed on a number of statutory assumptions. But values may fluctuate over time and the main effect of sub-paragraph 2(1) is to require the level of new assessments, made between general revaluations, to be consistent with that of any comparable hereditaments, which are in the same state and circumstances, in the List. It is colloquially known as "the tone of the List" rule.

13. Article 54 makes provision for appeals to this Tribunal and also provides:

> "(3) 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."

So there is a presumption of correctness.

14. For a more detailed discussion of these principles see e.g. <u>A-Wear Ltd v Commissioner of Valuation</u> [2003] and <u>McKeown Vintners Ltd v Commissioner of Valuation</u> [1991].

15. In the List, the subject was described as "Warehouses", and comprised sheds that were part of a subdivided 1970s factory building. They had been erected and used as part of a textile factory complex until the 1980s and last used as storage. Mr Neill

analysed the NAV of £96,000 at £16.20 per square metre for the main warehouse area, to which he added £1,807 for some poor storage and £3,118 for a sprinkler system, giving a total of £96,730 which he rounded down to £96,000. Mr Elias proposed a figure equating to about £9.00 per square metre (in his evidence he used imperial units) for the main warehouse area, added £436 for the poor storage and nothing for the sprinkler system.

16. Mr Neill relied on 6 comparables in the List, all also located in Coleraine:
    a. 5 Hillmans Way – mainly industrial use, part of a 1970s factory of steel frame construction with a NAV of £112,000, which he analysed at £16.20 per square metre for the main production area of about 6,000 square metres;
    b. Unit D, 5 Hillmans Way – mainly industrial use, part of a 1970s factory of steel frame construction with a NAV of £38,100, which he analysed at £19.30 per square metre for the smaller main production area of about 2,000 square metres;
    c. 6 Hillmans Way – mainly industrial use, a refurbished 1970s factory of steel frame construction with a NAV of £250,000, which he analysed at £18.00 per square metre for the main production area of about 11,000 square metres;
    d. Unit A, 10 Hillmans Way – mainly storage use, a 1980s former timber yard of steel frame construction, partly open-sided with a NAV of £125,000, which he analysed at £19.80 per square metre for the main storage area of about 2,000 square metres and at £13.50 per square metre for the open-sided storage area of about 5,000 square metres;
    e. 17 Northbrook Industrial Estate – mainly storage use, a 1970s workshop/stores of steel frame construction, with a NAV of £18,500, which he analysed at £19.80 per square metre for the main storage area about 4,000 square metres; and
    f. 2 Curragh Road – mainly industrial use, a 1960s factory (part added 1970s) of steel frame construction with a NAV of £210,000, which he analysed at £13.20 per square metre for the main production area of about 7,000 square metres in total.

17. Mr Elias relied on four open market lettings, all at Hillmans Way:
    g. Units A, B & C - let for a term of 5 years from 1997 at £72,500 (excluding a service charge), which he analysed at about £8.80 per square metre;
    h. Units B & C (the subject) - let from 2006 at £64,250 (including a service charge of about £0.22 per square metre), which he analysed at about £8.60 per square metre, or in the alternative (by comparison with i. and j. below), partly at about £7.80 per square metre and partly at about £10.00 per square metre;

i. Unit A - let from 2006 at £18,000 (including a service charge), which he analysed at about £7.80 per square metre; and
j. Part Unit D - let from 2007 at £20,000 (including a service charge), which he analysed at about £10.00 per square metre.

18. Mr Shaw QC did not object to the Tribunal receiving the correspondence between Mr Elias and Mr Taggart, the local agent. This was to the effect that Mr Taggart had some 14 years experience of the local property market and had been responsible for numerous sales and lettings. He knew of lettings of smaller buildings but in regard to buildings of the scale of the subject, about 3,000 to 10,000 square metres, he knew of sales transactions but not of any lettings, apart from lettings at Hillmans Way Business Park. He also commented on current market conditions and the effect of the rates liability.

19. The principal issues raised by Mr Elias, in his comprehensive and carefully prepared submissions, may be considered in two categories. The first was whether or not there were potentially helpful comparables in the List because none were "in the same state and circumstances" as the subject. The second was whether or not the assessments of any such comparables were correct. He suggested that if these questions were answered correctly, the tone of the List rule would not apply.

20. Mr Elias suggested that the comparables in the List were not "in the same state and circumstances" as the subject because they were owner occupied, or because they were in a different planning use category.

21. The expression "in the same state and circumstances" also appears in Article 52 allowing the Commissioner, following his decision on an appeal, to make such alteration, in relation to any comparable hereditament which is <u>in the same state and circumstances</u> as the appealed hereditament, as appears to him to be necessary in order to render the valuations proportionate and uniform. The Tribunal is of the view that the expression should be given a narrower rather than a broader meaning. (See also <u>McKeown Vintners Ltd v Commissioner of Valuation</u> [1991].) But the actuality of the tenure of a hereditament has nothing to do with the question of whether, as a valuation in the List, it is sufficiently similar to be taken as being a helpful comparable for the subject. No matter what their other characteristics might be, in the List all hereditaments are deemed to be let in accordance with the statutory assumptions. In regard to Use Class, Mr Elias said that the comparables on which Mr Neill relied were

all within Use Classes B2 or B3 (light or general industrial) of the Planning (Use Classes) Order (NI) 2004, whereas the use of the subject now had been changed to Class B4 – storage or distribution. However, any requirement to have regard to the net annual values of comparable hereditaments which are in the same state and circumstances does not preclude taking into account, subject to proper adjustments, others that are not; Unit A, 10 Hillmans Way and 17 Northbrook Industrial estate (see comparables d. and e. in para. 16 above) would appear to be within the same Use Class B4 – storage or distribution; Mr Elias produced no evidence that the subject or comparables would be restricted to their current use class only; and, on the evidence before the Tribunal it is not apparent that, in principle, there is any difference in levels of value between these use classes in the List. The Tribunal notes that, although there may have been similar legislation, the 2004 Order could not have been in place at the time of the general revaluation. For these reasons the Tribunal is not persuaded that there were no comparables in the List "in the same state and circumstances" as the subject.

22. In regard to the correctness of those valuations in the List, Mr Elias suggested that they were not supported by any market evidence and when the local property market in Coleraine was examined, the historical letting evidence supported a reduction. He suggested that the level set was too high and that may be because the Commissioner should have but did not distinguish between different Use Classes. Also, although the NAVs of almost all the comparables in the List had remained unchallenged since the General Revaluation (effective in 2003), he suggested that was probably because of a lack of worthwhile benefit from any challenge - mainly because of cost or the effect of industrial de-rating.

23. For the following reasons the Tribunal is not persuaded that Mr Elias has succeeded in displacing the presumption that the valuations shown in the valuation list were correct. Both in law and in practice the time for an effective challenge to the evidential basis, that set the tone of the List at the relevant General Revaluation, is long past. (See A-Wear Ltd v Commissioner of Valuation [2003] and McKeown Vintners Ltd v Commissioner of Valuation [1991].) Any attempt now to reconsider the principles and basis on which the tone was set would be mainly speculation - records of the rental evidence that were assembled at the time are no longer available. The profile that Mr Elias produced of employment and demand for premises in the area focussed on 2007, long after the relevant time at which the economic circumstances would have been considered. The letting evidence that Mr Elias produced was limited to one

letting four years before, and three lettings five or six years later than the relevant antecedent valuation date (1st April 2001). At the time the List came into operation, apart from one exception, the assessments were not challenged. The exception was that shortly after the coming into operation of the List, an application relating to the subject was made to the District Valuer for a reduction - to reflect a limitation in the load bearing capacity of part of the floors. An allowance was made and the resultant assessment was accepted without appeal to the Commissioner. The Tribunal does not accept that the cost of an application to the District Valuer or an appeal to the Commissioner then would have been disproportionate, especially in light of the scale of the reduction that Mr Elias contends for now.

24. The Tribunal accepts that it is possible that the letting market for 'sheds' used for Use Classes B2 or B3 (light or general industrial) may now differ from used for Class B4 – storage or distribution – and size may be important. And, although, at the time of the coming into operation of the relevant List, the decision to phase out the, then 100%, industrial relief shortly afterwards (from 2005) was known, the Tribunal does accept that, at the time, there may have been less incentive for those occupiers who were light or general industrial occupiers to challenge an assessment. These matters may be something to be considered in preparations for the general revaluation that is currently in preparation.

25. Mr Elias criticised the relative pricing of different parts of the hereditament but that was mainly to assist analysis of the 2001 letting. He also criticised the pricing applied to some small dilapidated office areas but in the light of the rounding down in Mr Neill's calculation, the Tribunal is content to adopt his final rounded down figure.

26. The Tribunal concludes that Mr Elias has not shown that the comparables in the List on which the Commissioner relied were not comparable or that their assessments were incorrect. The tone of the List rule does apply. The statutory assumption that the valuation shown in the valuation list shall be deemed to be correct has not been displaced. The appeal is refused.

ORDERS ACCORDINGLY

24th April 2013

Michael R Curry FRICS Hon.Dip.Rating
LANDS TRIBUNAL FOR NORTHERN IRELAND