

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
RATES (NORTHERN IRELAND) ORDER 1977

IN THE MATTER OF AN APPEAL

VT/2/2018

BETWEEN

PATRICK GALBRAITH AND TERESA GALBRAITH – APPELLANTS

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: 33 Newry Road, Newtownhamilton

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

Background

1. Mr Patrick Galbraith and Mrs Teresa Galbraith (“the appellants”) are the owners and ratepayers of a domestic property located at 33 Newry Road, Newtownhamilton (“the reference property”) which comprises a two storey detached house of some 438m² gross external area (GEA) and an integral garage of some 65m² GEA. The GEA of the house, as assessed by the Commissioner of Valuation (“the respondent”), was disputed by the appellants. The reference property, which is in a rural location approximately one mile from Newtownhamilton, was constructed in 2014.
2. On 27th May 2014 the reference property was first entered into the Valuation List with a Capital Value rates assessment of £390,000. The appellants appealed this assessment to the respondent and the Capital Value was reduced to £380,000, with an additional 5% allowance granted to reflect the reference property’s proximity to an amenity site, giving a Capital Value in the Valuation List of £360,000.

3. Following the construction of a wind turbine in the locality of the reference property the appellants made an application to the District Valuer seeking a further reduction. The District Valuer gave his decision on 16th November 2015 and issued a certificate stating:

“Valuation as assessed is considered fair and reasonable in comparison to similar properties.”

The Capital Value therefore remained unaltered at £360,000.

4. The appellants then appealed to the respondent who issued a decision on 15th December 2015, increasing the Capital Value to £380,000 and stating:

“Valuation, as amended, is considered fair and reasonable in comparison to similar properties.”

The respondent had removed the 5% allowance previously given by him to reflect the reference property’s proximity to the amenity site.

5. The respondent’s decision was then referred to the Northern Ireland Valuation Tribunal (“NIVT”) and following an oral hearing the NIVT issued its decision on 12th May 2017:

“For the reasons set out in this decision the Tribunal (NIVT) is convinced that the Appellants appeal should be allowed. The range of possible capital reductions is relatively wide and the Tribunal (NIVT) must consider the cumulative effect of any reduction. Having considered the matter carefully, the Tribunal (NIVT) allows a 12.5% reduction in the capital value.”

This, in effect, reduced the Capital Value of the reference property to £330,000 and it is this assessment which is the subject of the present appeal to the Lands Tribunal, the President of the NIVT having granted the appellants leave to appeal.

Procedural Matters

6. Mr Patrick Galbraith represented the appellants as a litigant in person and gave written and oral evidence. Ms Sonia McIntyre, an experienced chartered surveyor from Land and Property Services (“LPS”), represented the respondent. The Tribunal is grateful to both parties for their detailed and informative submissions.

Position of the Parties

7. The appellants sought a further reduction in their Capital Value:- 10% for proximity to the amenity site and 12.5% for the effects of the wind turbine, giving a total allowance sought of 22.5%. The respondent’s opinion was that no allowances were warranted and the Capital Value should be increased to £380,000.
8. At the outset of the hearing the Tribunal made the appellants aware that the Lands Tribunal was not bound by the decision of the NIVT to grant a 12.5% allowance and that this figure could be amended, up or down, in the subject hearing, depending on the factual evidence presented. They were content to continue.

The Law

9. The following sections of the Rates (Northern Ireland) Order 1977 (“the Order”) are relevant to the subject reference.

“Article 39

(1A) For the purposes of this Order the following hereditaments shall be valued upon an estimate of their capital value

- a) any dwelling house

b)

c)

(1B) ...

(1C) ...

(2) Without prejudice to any other statutory provision but subject to Article 39(A), Schedule 12 shall have effect for the purpose of providing for the manner in which the net annual value or the capital value of a hereditament is to be, or may be, estimated, and the other provisions of that Schedule shall have effect.”

And

“Appeal from decision or direction of Valuation Tribunal

54A-(1) Any person who is aggrieved by any decision or direction of the Valuation Tribunal under Article 13(3) or 54(2) may, with the leave of –

(a) the Lands Tribunal; or

(b) the President of the Valuation Tribunal

appeal to the Lands Tribunal.

(2) ...

(3) ...

(4) ...

(5) On an appeal under this Article, any valuation shown on a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown.”

And

“SCHEDULE 12

BASIS OF VALUATION

PART 1

GENERAL RULE

7(1) Subject to the provisions of this Schedule, for the purposes of this Order, the capital value of a hereditament shall be the amount which, on the assumptions mentioned in paragraphs 9 to 15, the hereditament might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date.

(2) In estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regards shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised.

(3) The assumptions mentioned in paragraphs 9 to 15 shall apply for the purposes of determining whether one hereditament is a comparable hereditament in the same state and circumstances as another with the omission of sub-paragraphs (2) and (3) of paragraph 12.

(4) In sub-paragraph (1) 'relevant capital valuation date' means 1st January 2005 or such date as the Department may substitute by order made subject to negative resolution for the purposes of a new capital value list.

Capital value – the assumptions

8. In this paragraph and paragraphs 9 to 15 –

'incumbrance' means any incumbrance, whether capable of being removed by the seller or not, except service charges;

9. The sale is with vacant possession.

10. The estate sold is fee simple absolute or, in the case of a flat, a lease for 99 years at a nominal rent.

11. The hereditament is sold free from any rentcharge or other incumbrance."

10. Article (2) defines a hereditament as a "unit" which would "fall to be shown as a separate entry in the valuation list". The reference property therefore comprises a separate hereditament and as per Article 7(4) the relevant valuation date is 1st January 2005.

Discussion

11. In their written and oral evidence the appellants submitted that there were three factors which had a detrimental effect on the Capital Value of the reference property and which the respondent had not properly take into account:
- (i) a miscalculation in the habitable space of the reference property resulting in an incorrect assessment of Capital Value.
 - (ii) the proximity of the reference property to an amenity site, with a disused landfill site adjoining.
 - (iii) the proximity of the reference property to a wind turbine.

The Habitable Space/Capital Value

12. Initially the appellants contended that accommodation above the garage and a walkway between this accommodation and the main dwelling, should not be included in the calculation of the GEA for the main dwelling. Rather they submitted that it should be included in the GEA of the garage. The accommodation above the garage had been plastered, painted, fitted with flooring and was solely accessed from the main dwelling. There was no access from the garage. Apart from the absence of heating it was generally agreed that this area was of a similar standard to the main dwelling.
13. Ms McIntyre advised the Tribunal that the standard approach adopted by LPS when valuing similar accommodation accessed from the main dwelling was to include it in the calculation of the GEA of the main dwelling. She also advised the Tribunal that this was in accordance with the Royal Institute of Chartered Surveyors Code of Measuring Practice (6th Edition) and the LPS Code of Measuring Practice for Rating Purposes.
14. When questioned by the Tribunal and following Ms McIntyre's evidence, the appellants generally accepted that the accommodation above the garage should be included in the GEA of the main dwelling. The Tribunal agrees. This gave a GEA of 438m² for the main dwelling and 65m² for the garage.

15. In order to assess the correct Capital Value for the reference property Ms McIntyre gave evidence of four comparable assessments, all within the general locality of the reference property:

- (i) 64A Slatequarry Road, Cullyhanna
Privately built (2011) 2 storey detached house with a GEA of 463m² and a garage of 54m². Capital Value assessed at £400,000.
- (ii) 21 Outleckan Road, Belleek
Privately built (2011) detached 2 storey dwelling with a GEA of 427m² and a garage of 22m². Capital Value assessed at £380,000.
- (iii) 6 Macullagh Road, Newtownhamilton
Privately built (2013) detached 1.5 storey dwelling with a GEA of 432m² and a garage of 58m². Capital Value assessed at £385,000.
- (iv) 60 Carrickrovaddy Road, Belleek
Privately built (2013) detached 1.5 storey dwelling with a GEA of 424m². No garage. Capital Value assessed at £350,000.

16. Based on these comparables Ms McIntyre's opinion was that £380,000 was the correct Capital Value to be applied to the reference property. Setting aside other factors such as the impact of the amenity site and the wind turbine, the Tribunal agrees that £380,000 is the correct Capital Value. The appellants did not produce any evidence to dispute this figure.

The Amenity Site

17. Located some 300 metres from the reference property was a civic amenity site known as Newtownhamilton Household Recycling Centre and which had been constructed on a former landfill site that ceased operation in or around 2002. The use of the amenity site was limited to household waste and it operated a low head height barrier which restricted the size of vehicles, although it was accepted by Ms McIntyre that there was occasional use by larger vehicles.

18. Mr Galbraith complained of the noise generated by vehicles using the site and also of the presence of lighting and security cameras on the site which impacted on the privacy of his property. He also complained of “fly-tipping” at the site which mainly occurred when the gates were shut and rubbish was deposited at the road side.

19. Ms McIntyre submitted that, due to the sloping nature of the landscape and the vegetation in the adjoining fields, the amenity site was barely visible from the reference property. She inspected the reference property on 27th November 2016 and 22nd July 2017. On both those occasions she observed that there was no disturbance or noise generated by the amenity site.

20. Ms McIntyre gave evidence that there were two properties in the Valuation List, Nos. 36 and 39 Newry Road, which were closer to the amenity site and these properties had not been given reductions in their Capital Value. No. 36 was 184 metres from the site and No. 39 was 260 metres. She advised the Tribunal that her research of LPS records showed that no properties in the Newry and Mourne Council District had been given allowances for proximity to an amenity site.

21. Mr Galbraith made reference to the part of the disused landfill site adjoining the amenity site which was some 170 metres from the reference property. He referred the Tribunal to a document produced by the Northern Ireland Environment Agency (“NIEA”) relating to a planning application for the erection of a wind turbine some 500 metres from the reference property. The document, which was dated 6th January 2014, stated:

“Based on the available information, the previous activities at this site may have caused the land to be affected by contamination. It is recommended that planning approval is withheld pending the submission agreement of additional information to identify and manage the risks.”

22. Mr Galbraith advised the Tribunal that following on from the NIEA report he met with representatives from Newry and Mourne Council. They were to investigate the possibility of contamination from the landfill site but to date there has been no response. His main concern was that the reference property was situated some 4 metres below the level of the landfill site and if there was contamination there was a significant risk of seepage on to his property. The Tribunal agrees. It was accepted by Ms McIntyre that this landfill site had never been capped or sealed and there may be a risk of contamination, although none had surfaced as yet. It was her opinion that more research was required in order to assess if the risk of contamination would have an impact on Capital Value. No evidence of any risk of contamination to the properties at 36 and 39 Newry Road had been presented to the Tribunal.

23. Mr Galbraith referred the Tribunal to the Valuation List entry for a property at 44 Chapel Hill Road, Mayobridge which had been granted a 10% allowance to reflect its proximity to an operational landfill site. It was agreed that this property was located some 213 metres from the entrance to the landfill site.

24. Ms McIntyre advised the Tribunal that the 10% allowance had been granted to reflect that the landfill site was operational and there was a significant nuisance from noise, smell, flies, traffic etc. associated with the site. The allowance had been granted on 5th July 2013 and was removed by LPS on 29th August 2017, when the site has ceased to be operational. It was accepted by Ms McIntyre that this site had been sealed and capped.

25. Mr Galbraith considered that the reference property should be granted a similar 10% allowance. Ms McIntyre's opinion was that the effects of the operational landfill site at 44 Chapel Hill Road were much more severe and there was no evidence to suggest that an allowance on the reference property was warranted. She considered the effects of the disused landfill site and the amenity site adjacent to the reference property to be minimal. In its decision the NIVT had granted a 5% allowance but this was mainly to reflect "fly-tipping" in the locality.

26. The Tribunal agrees with Ms McIntyre, the effects of the fully operational landfill site at 44 Chapel Hill Road were more severe. The Tribunal considers, however, that the possibility of contamination from the non-operational landfill site, coupled with the disturbance associated with the amenity site including “fly-tipping”, would have an adverse impact on the Capital Value of the reference property and on that basis the Tribunal grants a 5% allowance.

The Wind Turbine

27. Ms McIntyre gave the following factual evidence relating to the wind turbine:- it was located some 510 metres (0.3 mile) from the reference property, it had a maximum output of 250 kw, a length of 32 metres, a rotor diameter of 30 metres and a height to top of 47 metres. These facts were not disputed. She advised the Tribunal that she inspected the reference property on 27th November 2016 and on 22nd July 2017. On both occasions she observed that the visual impact of the turbine was “very limited” and no noise, disturbance, or strobing occurred.
28. Ms McIntyre submitted that, as the visual impact of the wind turbine was minimal and the appellants had failed to provide any evidence of any noise or flashing, no allowance was warranted.
29. Mr Galbraith considered the visual impact of the wind turbine and the noise and vibration emanating from the turbine to be factors which would have an adverse impact on the Capital Value of the reference property. He accepted that the noise disturbance was intermittent and depended on weather conditions. He asked the Tribunal to note, however, that at certain times the appellants could not open their windows in the house due to the noise and they could feel a vibration on occasions.

30. When questioned by the Tribunal, Mr Galbraith accepted that he had not submitted any specific market evidence of sales of domestic properties in Northern Ireland being adversely affected by the presence of a wind turbine.
31. He referred the Tribunal to a Lincolnshire Valuation Tribunal case re "Grays Farm and the Farmhouse, North Drove Bank, Spalding", appeal numbers 2525475645/032C and 2525475651/032C dated 17th July 2008. This case established that the presence of 8 x 2 megawatt wind turbines, built approximately 930 metres away from the appeal hereditaments, justified a reduction in the relevant Council Tax band.
32. It was Ms McIntyre's opinion that the appellants were not comparing like with like as, in the "Lincolnshire" case, the conditions were much more severe – 8 x 2 megawatt turbines some 930 metres from the appeal properties. She also submitted that the Lincolnshire case was determined in a different jurisdiction under legislation which differed from the Northern Ireland Rates Order.
33. The Tribunal notes the decision of the Lincolnshire Tribunal but derives little assistance from it. The Tribunal agrees with Ms McIntyre, the circumstances in the Lincolnshire case were much more severe and the legislation it was decided under varied significantly from the Northern Ireland legislation.
34. In its decision the NIVT accepted "as a matter of fact, that the presence of a wind turbine some 500 metres away from the Appellants subject property has a material impact on the Capital Value". It considered the impact to be in the region of 5% to 7.5% and decided upon granting a 7.5% allowance.
35. Ms McIntyre gave evidence of the following properties which were close to wind turbines:
 - (i) From the Newry, Mourne and Down/Armagh, Banbridge and Craigavon Council Districts

- (a) 36 Dree Hill, Dromara – 250 metres from a wind turbine; 10% allowance granted.
- (b) 27 Tievenamara Road, Keady – 120 metres from a wind turbine; 12.5% allowance granted.

With regard to comparable “(b)” Mr Galbraith asked the Tribunal to note that this was a smaller turbine with less noise. This was not disputed by Ms McIntyre.

(ii) From the rest of the Northern Ireland jurisdiction:

- (c) Ligford Road, Strabane – 265 metres from a wind turbine; 8% allowance granted.
- (d) Dundoan Road, Coleraine – 300 metres from a wind turbine; 10% allowance granted.

She asked the Tribunal to note that all of these properties were much closer to a wind turbine and no allowances had been granted for properties more than 300 metres from a wind turbine.

- 36. Mr Galbraith considered that the effect of the subject wind turbine on the reference property warranted a 12.5% allowance similar to the property at Tievenamara Road, Keady which was located 120 metres from a smaller wind turbine.
- 37. Ms McIntyre also gave evidence that the reference property was one of five properties located within a distance of 500 metres from the subject wind turbine. None of the other properties had an allowance applied. It was her opinion therefore that, in accordance with tone of the list, no allowance should be applied to the reference property. There were four properties closer to the subject wind turbine and none of these had been granted allowances:

15 Cavankill Road	370 metres
31 Cavankill Road	240 metres
29 Cavankill Road	360 metres
39 Cavankill Road	470 metres

38. The Tribunal agrees with Ms McIntyre, it was clear from the Cavankill Road comparable evidence that a tone of the list had been established for the locality of the reference property. That tone was not to grant allowances for properties from 240 metres to 470 metres from the subject wind turbine. The reference property was further away, some 500 metres. In addition, evidence from the wider Northern Ireland jurisdiction showed that no allowances had been granted for distances greater than 300 metres from a wind turbine. Having regard to comparable hereditaments in the Valuation List, as stipulated by Schedule 12 paragraph 7(2) of the Order, the Tribunal finds that no allowance is warranted for the proximity of the reference property to the subject wind turbine. The Tribunal notes that the NIVT had granted a 7.5% allowance but it was evident from their decision that the comparable evidence relating to the properties at Cavankill Road, closer to the subject wind turbine, was not available to them.

Decision

39. The Tribunal grants an allowance of 5% for the proximity to the disused landfill/amenity site:

Capital Value	£380,000
Less	<u>5%</u>
	£361,000
Say	£360,000

and assesses the Capital Value of the reference property for rates purposes at £360,000.

ORDERS ACCORDINGLY

21st August 2018

**Henry M Spence MRICS Dip.Rating IRRV (Hons)
Lands Tribunal for Northern Ireland**

Appearances:

Appellants – Mr Patrick Galbraith, Litigant in Person.

Respondent – Ms Sonia McIntyre, Land & Property Services.