

NORTHERN IRELAND VALUATION TRIBUNAL

**THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007**

CASE REFERENCE NUMBER: 27/10

PADRAIG WALSH – APPELLANT

AND

COMMISSIONER OF VALUATION NI – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Barbara Jemphrey

Members: Philip Murphy and Peter Wardlow

Belfast, 8th August 2011

DECISION

The unanimous decision of the Tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 25th October 2010 is upheld and the Appellant's appeal is dismissed.

REASONS

1. Introduction

- 1.1 This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order").
- 1.2 By a Notice of Appeal dated 31st January 2011 the Appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland ("the Commissioner") dated 25th October 2010 in respect of the Valuation of a hereditament situated at 45 Sandymount Street Belfast (the Subject Property).
- 1.3 All parties to the Appeal had indicated that they were each content that the Appeal be disposed of on the basis of written representations in accordance with Rule 11 of the Rules and accordingly there was no appearance before the Tribunal by or on behalf of any of the parties.

2. The Law

- 2.1 The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order").

2.2 The tribunal considered the terms of the Schedule 12 of the 1977 Order as amended which states as follows;

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, regard 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.

2.3 Article 54(3) of the 1977 Order provides that, on appeal, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.

3. The Evidence

The Tribunal heard no oral evidence but had before it the Appellant's Notice of Appeal dated 31st January 2011 and copies of various documents including the following:-

- 3.1 The Commissioner's Decision on Appeal dated 25th October 2011
- 3.2 A document entitled "Presentation of Evidence" submitted on behalf of the Commissioner by Deborah Rice of Land and Property Services.
- 3.3 Correspondence between the Tribunal and the Parties.
- 3.4 Several extensive written submissions (latterly including photographs) from the appellant Mr. Walsh

All of these documents had been provided to all of the Parties who had each been given an opportunity to consider and respond to them before being considered by the Tribunal.

4. The Facts

Based upon the information before it, the Tribunal determined, upon the balance of probabilities, the following facts:-

- 4.1 The hereditament is a mid terrace two storey house situated at 45 Sandymount Street, Belfast (the Subject Property). The Subject Property was stated to be owned by the Appellant whom the Tribunal understood to be the rate payer. The Tribunal had no other information regarding the

title to the Subject Property or regarding its physical construction and characteristics save as mentioned in the papers before the Tribunal and referred to herein.

- 4.2 The Subject Property is of red brick and slate construction, built circa 1910. It has a gross external area (GEA) of 108m².
- 4.3 The Capital Value Assessment of the Subject Property is £210,000. In arriving at the Capital Value Assessment figure regard was had to the assessments in the valuation list of properties considered comparable and also to market sales of certain properties in the general locality. These comparables are set out in the Schedule to the "Presentation of Evidence" submitted on behalf of the Commissioner. There are a total of 5 comparables within the locality.
- 4.4 The Capital Value Assessments of the comparables were all unchallenged.

5. The Appellants Submission

The Appellant, in summary, has made the following submissions:-

- 5.1 The valuation of the subject property is too high. The values of the properties in this area in the last 10 years has been driven by and related to their popular use as student HMOs (houses in multiple occupation).
- 5.2 Not all properties in the area can function as an HMO and since the Rates revaluation in 2005 planning policies forbid the remaining 5% of properties that are not HMOs to achieve this status.
- 5.3 Save as already referred to the Appellant did not seek to otherwise challenge the appropriateness of the comparables submitted in evidence on behalf of the Commissioner nor the accuracy of the particulars of those comparables.

6. The Respondents Submissions

(Including further submissions by way of clarification, post-tribunal date)

In summary the following submissions were made on behalf of the Commissioner.

- 6.1 The Capital Value Assessment of the Subject Property was carried out in accordance with the legislation contained in the 1977 Order and in particular paragraphs 7 and 9-15 inclusive of Schedule 12 of the 1977 Order. In doing so, the requirements in Schedule 12 that "regard shall be had to the Capital Values in the Valuation list of Comparable hereditaments in the same state and circumstances" was duly observed.
- 6.2 At the Antecedent Valuation Date (AVD) 1st January 2005 the Planning

(Use Classes) Order (NI) 2004 required planning permission to be obtained for a change of use for a property to an HMO.

- 6.3 The Belfast Metropolitan Area Plan (BMAP) 2015 was published on 30th November 2004. Hou 6 of the BMAP dealt with the conversion of buildings to multiple occupation. From that date HOU 6 became a material consideration in respect of planning applications for HMO use.
- 6.4 The policy contained in the BMAP did not include a restriction on the number of HMO in any area.
- 6.5 The draft HMO Subject Plan for Belfast City Council Area was published on 27th June 2006. The draft Subject Plan superseded the BMAP in respect of HMO development. Therefore only at that point did the Subject Plan become a material consideration in respect of planning applications for HMO use.
- 6.6 The draft Subject Plan restricted the number of HMO in specific areas. The Sandymount Street area in which the Subject Property is situated was one such area.
- 6.7 The Capital Value of the Subject Property was assessed as required by the legislation.

7. The Tribunal's Decision

- 7.1 Article 54 of the 1977 Order enables a person to appeal to the Tribunal against the decision of the Commissioner on appeal as to Capital Value. In this case the Capital Value has been assessed at the AVD at a figure of £210,000. On behalf of the Commissioner it has been contended that figure is fair and reasonable in comparison to other properties and the statutory basis for valuation has been referred to and especially reference has been made to Schedule 12 to the 1977 Order in arriving at that assessment.
- 7.2 The Tribunal must begin its task by taking account of an important statutory presumption contained within the 1977 Order. Article 54(3) of the 1977 Order provides: "*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*". It is therefore up to the Appellant in any case to challenge and to displace that presumption, or perhaps for the Commissioner's decision on appeal to be seen to be so manifestly incorrect that the tribunal must take steps to rectify the situation.
- 7.3 At the AVD the Subject Property would not necessarily have been disadvantaged in terms of potential market value because of the then lack of planning permission for HMO use. From evidence before the Tribunal it appears such planning permission could have been readily obtained at that time.

The Tribunal notes that the subsequent Subject Plan for the Belfast City Council area superseded the BMAP in respect of limiting HMO development in Sandymount Street area. This was however not relevant at the AVD.

- 7.4 The Tribunal saw nothing in the approach adopted to achieve the initial assessment as to Capital Value, nor in the Decision of the Commissioner on appeal, to suggest that the matter had been assessed in anything other than the prescribed manner provided for by Schedule 12, paragraphs 7 (and following) of the 1977 Order. The statutory mechanism has been expressly referred to in the Commissioner's Submissions to the Tribunal and the Tribunal notes the evidence submitted as to comparables and concludes that the correct statutory approach has been followed in this case in assessing the Capital Value.
- 7.5 The Tribunal then turns to consider whether the evidence put before the Tribunal or the arguments made by the Appellant are sufficient to displace the statutory presumption. The Appellant's arguments have been summarised above.
- 7.6 The Tribunal having examined the facts of the matter and the arguments and submissions finds that there is insufficient evidence to support the Appellant's Submissions. The Appellant has not displaced the statutory presumption that the valuation shown in the Valuation List in respect of the Subject Property shall be deemed to be correct until the contrary is shown. Accordingly the Tribunal's unanimous decision is that the Commissioner's Decision on Appeal dated 25th October 2010 is upheld and the Appeal is dismissed.

Barbara Jemphrey, Chairman
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 7 September 2011