

NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: NIVT 28/15

WILLIAM YOUNG APPELLANT

AND

COMMISSIONER OF VALUATION FOR NI - RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 11 January 2017

Chair: Sarah Ramsey

Members: Tim Hopkins (Valuer) and Robert McCann (Lay)

DECISION AND REASONS

The Facts of the Case

1. This is an appeal relating to a detached house situate at 39A Carrowdore Road Greyabbey, BT22 2LX.
2. The reference is made under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order"). By a Notice of Appeal dated 26 August 2015 the Appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland ("the Commissioner") in respect of the decision letter of 20 July 2015 in relation to the valuation of the hereditament situate at 39A Carrowdore Road Greyabbey ("the subject property") as £370,000.
3. The Appellant attended at the hearing and presented his appeal.
4. The Property is a detached two-storey house constructed in 2004. The Gross External area is 333m² with a garage of 47m². The property has double glazing, heating and all mains services are available and connected.
5. The Appellant in his Notice of Appeal indicated that the property cannot have a capital value as the property had been illegally constructed and was subject to an enforcement notice to demolish.

The Evidence

6. The following documents were before the tribunal;

- Appellants' original Notice of Appeal to the Tribunal dated 26 August 2015 in respect of 39a Carrowdore Road Greyabbey;
 - Appended documents to the Notice of Appeal, namely Certificate of Valuation of the subject property dated 20 July 2015; Copy application made on behalf of the Appellant to the Lands Tribunal in respect of the subject property dated 12 August 2015
 - Documentation relating to previous agreed adjournment application made on behalf of the Appellant
 - Written submission made on behalf of the Appellant dated 6 April 2016
 - Written replying submission of the Appellant dated 12 May 2016 with attachments, namely copy Enforcement Notice dated 9 January 2004 with Map identifying property, copy Search of Statutory Charges dated 22 September 2004 confirming the registration of the Enforcement Notice, Copy valuation from John McDowell & Sons Auctioneer dated 21 September 2006 valuing agricultural lands on which subject property was built as £8,000; Copy letter from Neill Estate Agents dated 16 March 2009 indicating property having a nil value due to difficulties over the laneway and with lack of full planning approval
 - Respondent's written Presentation of Evidence dated 26 February 2016;
 - Respondent's response to Appellant's additional information of 6 April 2016 dated 20 April 2016
 - Copy decision of **Case No 30/14 Adam Cochrane -v- Commissioner for Valuation 22 June 2015.**
7. This notice communicates the Tribunal's decision and contains the reasons for the decision in accordance with Rule 19 of the Valuation Tribunal (NI) Rules 2007.

The Hearing

8. The Respondent endorsed the Respondent's position as set out in the written presentation of evidence. The evidence given was that on 3 January 2014 the Appellant submitted an application to the District Valuer for revision of the valuation list on the grounds that Planning Service had served an Enforcement Notice on the subject property, requiring it to be demolished.
9. The subject property was found by the District Valuer to be occupied by the Appellant, and he declined to change the capital value. The Appellant was notified of this decision on 12 June 2015. The essence of the Appellant's contention was that as the subject property had no planning permission, and in fact the Enforcement Notice ordered demolition of the subject property, it had no value and therefore had a nil valuation on the list.
10. On 18 June 2015 Mr. Young appealed the District Valuer's decision. There were some difficulties in contacting the Appellant prior to the expiration of the 28 day appeal notice period. Following a review of comparable properties the Commissioner recommended the assessed capital value of £370,000 be maintained. Notice of this was issued 20 July 2015.
11. The Respondents contended that the statutory assumption as set out in Schedule 12, paragraph 15 had the effect that the LPS cannot take into account the lack of planning permission for the subject property.

12. The Respondent went on to reference **Cochrane-v- Commissioner for Valuation 30/14** as supporting this assumption.
13. The Respondent indicated that a hereditament exists, and having reviewed the valuation by looking at the comparables included in the presentation of evidence, he was satisfied the Capital assessment of £370,000 is fair and reasonable.
14. The Appellant then gave evidence. He sought to rely on his written submissions dated 6 April and 12 May 2016. In evidence the Appellant confirmed he had commenced building the subject property in 2003, had completed it in 2004 and had been residing in it ever since. The Appellant had paid rates on the subject property from 2004 and the instant appeal was the first time he had appealed the Capital Value to the Valuation Tribunal.
15. The Appellant explained that the Enforcement Notice had issued on 9 January 2004 as a result of the subject property having been constructed on a part of the site that had not been granted planning approval. The Enforcement Notice sought the subject property be demolished and at the date of the Tribunal Hearing was still live.
16. An appeal of the Enforcement notice by the Appellant had not been received within the time limits. An application for Retrospective Planning Permission was refused in 2006. The property was not demolished and the Appellant and his wife continued to reside in it.
17. Consequently the Appellant had been convicted of failure to comply with the Enforcement Notice to demolish the subject property and had received a fine of £500 in 2004, £500 in 2010 and the Appellant and his wife had each been fined £75 000 in 2016. Although the ultimate fine was under Appeal, the Appellant described that he could be convicted of imprisonment of a period of twelve months if he did not comply with the Notice.
18. The Appellant made the case he could not sell the subject property as no-one would purchase it with no planning permission. He provided a letter to this effect from estate agents to this effect, and a valuation of the land only as agricultural land. The Appellant could not afford to demolish the subject property. He accepted that he had broken the law in not so demolishing it.
19. The Appellant helpfully acknowledged that in email correspondence on 21 July with the Respondents he agreed with the Respondent's contention that because of the nature of the Appeal an internal inspection of the property was not relevant. The Appellant went so far as to agree that but for the Enforcement notice he was satisfied with the comparables provided by the Respondent and the proposed valuation of £370,000.
20. The Appellant went on to say that notwithstanding the comparables and the proposed Capital valuation the subject property was not worth anything at present. He contended the Respondents had incorrectly interpreted the 2006 Order. His case was that the Statutory Presumption was only intended to be applied in the absence of information, and upon the provision of further information, the presumption should not apply.
21. The Appellant confirmed he had had the opportunity to consider the case of **Cochrane -v- Commissioner for Valuation 30/14**. He sought to suggest that paragraph 10 of that case reinforced his argument in that no evidence had been provided to counter the presumption. This established that:

In these matters there is a statutory presumption that, on appeal, any valuation shown in a valuation list with respect to a hereditament (in this case the property) shall be deemed to be correct until the contrary is shown. Thus, any appellant must successfully challenge and displace the presumption of the correctness, otherwise the appeal will not be upheld.

22. The Appellant contended he had provided the requisite evidence to displace the presumption. The Appellant confirmed he had no case law to support his argument. In his written submission the appellant contended that his Article 8 Rights under the European Convention on Human Rights had been engaged in that respect for his home and private life had been interfered with. However the Appellant on further questioning did concede that this was a qualified right, and that he had acted contrary to law in failing to demolish the subject property.
23. The Appellant's final argument was that his Article 6 rights had also been engaged under the Convention, as the Respondent had not taken into consideration the Enforcement Notice and the fact that as the property could not effectively be sold therefore having a value of nil; the foregoing was sufficient evidence to rebut the presumption set out in Schedule 12, Paragraph 15.

The Law

24. The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (hereinafter the 2006 Order). The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). The Tribunal, as is customary, does not intend in this decision to fully set out the statutory provisions of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, for the reason that these provisions have been fully set out in many decisions of this tribunal, which are readily available. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter.
25. Further relevant legislation for the purposes of this appeal is Article 2(2) of the 1977 Order which defines a 'hereditament' as follows;

"hereditament" means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in a valuation list.

26. Schedule 12 sets out the assumptions used in assessing the Capital Value at paragraphs 9-15. Namely that at paragraph 15:

*15. (1) There has been no relevant contravention of—
any statutory provision; or*

any requirement or obligation, whether arising under a statutory provision, an agreement or otherwise.

27. 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.
28. The issue before the Tribunal in this appeal is whether the subject property being a hereditament “which is or may become liable to a rate” within the definition of a hereditament set out in Article 2(2) of the 1977 Order had a nil valuation by virtue of the Enforcement Notice which effectively rendered the prospects of any resale of the property nil

The Tribunal’s Findings

29. The evidence presented by both parties was that the subject property was effectively a family home with all the standard amenities and services in which the Appellant had resided for nine years. It was the unanimous view of the Tribunal that in this context the subject property was a hereditament
30. The Tribunal must take account of the statutory presumption contained in Article 54(3) of the 1977 Order. It states

“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“.

31. It is therefore up to the Appellant in any case to challenge and to displace the 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.
32. The Tribunal then considered the issue as to whether the Appellant had, through the proofs and argument advanced, displaced the presumption of the correctness of the Capital Value.
33. In the case of **Cochrane –v- Commissioner for Valuation 30/14** no evidence had been forwarded to challenge the presumption.
34. In the instant case the Tribunal considered the effect of the Enforcement Notice on the Statutory Presumption under Schedule 12 of the Order.
35. This issue had been considered in the case of **Walsh-v- Commissioner for Valuation 6167187-3.** In that case presence or absence of planning permission for Housing of Multiple Occupation was found to have no effect on the capital value.
36. The presence or absence of planning permission had not prevented the Appellant from having used the subject property as a family home notwithstanding the existence of the Enforcement Notice since 2004
37. It is the Tribunal’s view that the Appellant has not discharged the burden upon them to show that the valuation assessed for the subject properties is not correct in accordance with paragraph 15 of Schedule 12 of the 1977 Order. The tribunal is of the view that the subject properties are appropriately on the Valuation List in accordance with tone with evidence the respondent has adduced in its Presentation of Evidence

38. In all of the circumstances and in light of the findings above the tribunal was satisfied that the valuations shown on the Valuation List in relation to the subject properties is correct and that the Tone has been established.
39. The Respondent produced five comparables in support of his assertion regarding the tone of the list that were unchallenged by the Appellant.
40. Article 8 of the European Convention on Human **Rights** provides a right to respect for one's

"private and family life, his home and his correspondence".

41. Right to respect for the home has been held to include a right not to have one's home life interfered with, including by unlawful surveillance, unlawful entry, or arbitrary evictions. None of these rights fits the present case.
42. Article 8 is a qualified right and as such the right to a private and family life and respect for the home and correspondence may be limited. So while the right to privacy is engaged in a wide number of situations, the right may be lawfully limited. Any limitation must have regard to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole.
43. In particular any limitation must be in accordance with law; necessary and proportionate; and for one or more of the following legitimate aims:

- a. the interests of national security;*
- b. the interests of public safety or the economic well-being of the country;*
- c. the prevention of disorder or crime;*
- d. the protection of health or morals; or*
- e. the protection of the rights and freedoms of others.*

44. The Appellant had been convicted in relation to non-compliance with the Enforcement Notice and had not demolished the subject property as legally required. The Tribunal considered, in the light of this fact, and as the above factors were not relevant to the instant case, the Appellant's Art 8 rights were not engaged in this case.
45. The Tribunal considered all the arguments and scrutinized all the documentation provided by the Appellant in pursuit of his Appeal. Oral and written evidence had been provided by the Appellant. On request the Appellant indicated he had no case law that he wished the Tribunal to consider. Accordingly the Tribunal did not accept the legal argument put forward by the Appellant and did not accept there had been a contravention of his Art 6 Convention Rights
46. The unanimous decision of the Tribunal is that the appeal is dismissed.

Ms. Sarah Ramsey, Chair

Northern Ireland Valuation Tribunal

Date Decision Recorded in Register and issued to Parties: 16 February 2017