

**NORTHERN IRELAND VALUATION TRIBUNAL  
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE  
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007  
CASE REFERENCE NUMBER: NIVT 4/19**

**RONALD FORSYTHE - APPELLANT  
AND  
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr. Alan Reid (Legal Chairman)  
Members: Mr Brian Reid (Valuer) and Mr Bob McCann (Lay Member)**

**Belfast, 10<sup>th</sup> November 2020**

## **DECISION**

The unanimous decision of the Tribunal is that the Appeal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 17<sup>th</sup> April 2019 is allowed and that the Capital Value of the property 51 Ballinran Road, Kilkeel, Newry, Co. Down BT34 4JA is assessed at £238,500.00 and the Valuation List should be amended accordingly.

## **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 received by the Tribunal on 15<sup>th</sup> May 2019 the Appellant appealed to the Northern Ireland Valuation Tribunal against the Notice of Decision issued by the Commissioner of Valuation for Northern Ireland (“the Commissioner”) dated 17<sup>th</sup> April 2019 in respect of the Valuation of a hereditament situated at 51 Ballinran Road, Kilkeel, Newry, Co. Down BT34 4JA (“the Subject Property”).
- 1.3 The 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 Valuation Tribunal Rules (Northern Ireland) 2007 (“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 relevant statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). The statutory provisions regarding the basis for valuation are contained in Article 8 of the 2006 Order which amended Article 39 of the 1977 Order and have been fully set out in numerous previous decisions of this Tribunal. The Tribunal does not therefore intend in this decision to fully set out the statutory provision of Article 8.

## 3. The Evidence

- 3.1 The Tribunal had before it the Appellant’s Notice of Appeal received by the Tribunal on 15<sup>th</sup> May 2019 and copies of various documents including: -

- Valuation Certificate in respect of the Subject Property issued on 17<sup>th</sup> April 2019;
- A document described as a “*Record of Odours as sent to N.M & D Environmental Health*” which accompanied the Appellant’s Notice of Appeal;
- A document entitled “Presentation of Evidence” submitted on behalf of the Commissioner by Mr. Gerard McGennity MRICS of Land and Property Services and received by the Tribunal on 27<sup>th</sup> May 2020;
- A letter from the Appellant dated 8<sup>th</sup> June 2020 in response to Mr McGennity’s “Presentation of Evidence”;
- An email dated 3<sup>rd</sup> July 2020 from Mr Steven Jeffrey of Land and Property Services on behalf of the Respondent with two accompanying satellite images responding to the Appellant’s letter of 8<sup>th</sup> June 2020;
- An email dated 30<sup>th</sup> July 2020 from the Appellant responding to Mr, Jeffrey’s email of 3<sup>rd</sup> July 2020;
- An email dated 11<sup>th</sup> August 2020 from Mr. Jeffrey responding to the Appellant’s email of 30<sup>th</sup> July 2020;
- An email dated 31<sup>st</sup> August 2020 from the Appellant responding to Mr, Jeffrey’s email of 11<sup>th</sup> August 2020;
- Correspondence between the Tribunal and the Parties.

## 4. The Facts

On the basis of such information as was before it, the Tribunal determined, upon the balance of probabilities, the following facts: -

- 4.1 The hereditament is a detached chalet style house constructed in 2018 and situated at 51 Ballinran Road, Kilkeel, Newry, Co. Down BT34 4JA (“the Subject Property”). The Subject Property was stated to be owned by the Appellant who was the rate payer.
- 4.2 The Subject Property is located rurally approximately 3 miles outside Kilkeel. The habitable space of the house is 271.9 m<sup>2</sup>. and it also has an adjoining garage measuring approximately 42 m<sup>2</sup>. The Subject Property was entered into the Valuation List by the District Valuer on 14<sup>th</sup> March 2019 with a Capital Value of £320,000.00.
- 4.3 The decision of the District Valuer was appealed to the Commissioner of Valuation on 22<sup>nd</sup> March 2019 and in consequence the Capital Value was amended to £260,000. The Tribunal was informed by the Respondent’s representative that this reflected an amended Capital Value of £275,000 with a further 5% reduction to take account of the proximity of the Subject Property to a pig farm located approximately 230 metres away from it. It is that decision which is the subject of this appeal.
- 4.4 The said Capital Value Assessment of the Subject Property is £260,000 (purportedly after the said 5% reduction) at the Antecedent Valuation Date (“AVD”) that date being 1<sup>st</sup> January 2005. In arriving at the Capital Value Assessment figure of £260,000.00 regard was had to assessments of properties in the Valuation List considered by the Respondent to be comparable. Three such comparables were set out in a Schedule to the “Presentation of Evidence” submitted on behalf of the Commissioner, further particulars of which, including photographs, were provided.
- 4.5 In addition to the three comparables referred to in its Schedule, the said “Presentation of Evidence” also noted two other properties within the local area which had been granted allowances specifically to take account of their proximity to pig farms. These properties were numbers 120 and 134 Carrigenagh Road Kilkeel and in the case of each of those properties a 10% allowance had been awarded to take account of this discrete factor.

## **5. The Appellant's Submissions**

In summary, the Appellant made the following submissions -

- 5.1 The Subject Property was adversely affected by odours emanating from the pig farm located, according to the Appellant some 200m from the Subject Property. The Appellant contended that the 5% reduction applied to the Capital Value in this regard was insufficient as it equated to a reduction of £15,000 whereas he felt that on the open market the “drop in value” of the Subject Property would be “much more”. It was also his submission that the 5% reduction resulted in a reduction in his annual

rates bill of approximately £115 which he felt would not cover the increased cost of laundering clothing affected by odours from the pig farm.

- 5.2 The Appellant contended that 40% of the winds in the area come from the east and that as the Subject Property is located due west of the pig farm it experienced odours on a regular basis. Quoting verbatim from his evidence, he stated that *“On a regular basis we cannot open windows or doors, prisoners in our own home, at times cannot go into our garden or wash cars. The odours are unpredictable and can be an embarrassment if friends, relatives or visitors call, can’t arrange bbqs and at times we leave our home to avoid the odours.”* He also stated that *“we also have to endure hours of noise pollution with the humming noise of the fans in the piggery which operate for hours on end”*. He referred to reports and publications published by DAERA in 2017 and 2019 highlighting adverse implications for health of those impacted by exposure to such odours.
- 5.3 In support of his submissions the Appellant provided a “Record of Odours” which he said he had provided to the Environmental Health Department of Newry Mourne and Down District Council in respect of the month of April 2019. This “Record of Odours” set out the Appellant’s assessment of the strength of the odour emanating from the pig farm on sixteen separate days during April 2019. In it he assessed the strength of the odour both indoors and outdoors at the Subject Property rating the strength of the odour on a scale of 1 to 4. The Tribunal understood 1 to indicate the mildest and 4 the strongest odour. He also recorded the wind direction on each of the sixteen days noting that it was blowing from an easterly direction on fourteen of those days and that it was calm on the other two days. On those sixteen days the Appellant rated the odour strength outdoors at the Subject Property as being strength 4 on seven days, strength 3 on eight days and strength 2 on one day. He rated the odour strength indoors at the Subject Property as being strength 2 on six days and strength 1 on the other ten days.
- 5.4 In his Notice of Appeal, the Appellant in his reasons for appeal indicated that Newry Mourne and Down District Council had served an abatement notice in respect of “odour nuisance” from the said pig farm.
- 5.5 The Appellant contended that he had been informed by his estate agent that he might have to discount his house by 25% if he wanted to sell it and even then, might not get an offer, though no evidence was presented from the estate agent in that regard. It was the Appellant’s submission that he did *“not consider it unreasonable to expect an allowance of 25% be granted for proximity to the pig farm”*.
- 5.6 It was contended by the Appellant that the Capital Value of the Subject Property at £260,000.00 was excessive and that its Capital Value should be £220,000.00.

- 5.7 Whilst the Appellant did not seek to challenge the Capital Values of any of the comparable properties put forward in the Respondent's Presentation of Evidence or the suitability of their state and circumstances as comparables, he contended that in the case of one of those properties (68 Ballinran Road, Kilkeel) it had been granted a 5% reduction to account for the effect upon it of its proximity to the pig farm, even though, according to the Appellant, it was twice as far away from the pig farm as the Subject Property.
- 5.8 With regard to the two further properties at 120 and 134 Carrigenagh Road Kilkeel referred to in the Respondent's "Presentation of Evidence" the Appellant contended that when 134 Carrigenagh Road was constructed the pig farm was already in existence and he further contended that 120 Carrigenagh Road was located to the north of the piggery and would therefore not be as adversely affected by the smell from it due to the prevailing easterly winds.
- 5.9 With regard to properties at numbers 4 and 6 Ballinran New Road Kilkeel which the Respondent contended were closer to the pig farm than the subject but which do not benefit from an allowance to reflect the negative impact of the pig farm, it was the Appellant's submission that there were specific factors relating to those properties which could explain the fact the owners may not have sought reductions and that therefore it was not valid to compare those properties with the Subject Property regarding this specific issue.

## **6.The Respondent's Submissions**

In summary, the following submissions were made on behalf of the Commissioner -

- 6.1 On behalf of the Commissioner it was submitted that in accordance with paragraph 7 (2) of Schedule 12 to the 1977 Order regard had been had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances as the Subject Property. Mr McGennity contended that the comparable hereditaments referred to in the Schedule to the Respondent's "Presentation of Evidence" supported a confirmation of the Capital Value of the Subject Property at £275,000.00 (before making a percentage reduction to allow for the proximity to the pig farm). All three of the said comparables were privately built detached chalet style dwellings in the Binnian Ward of Kilkeel. As such they were in the same state and circumstances as the Subject Property and, like the Subject Property, all had been constructed post 1990.
- 6.1.1 The property at 68 Ballinran Road, Kilkeel had a habitable space of 269 m<sup>2</sup> which was slightly smaller than the Subject Property and also had a 48 m<sup>2</sup> garage which was a little larger than the garage of the Subject Property. Its Capital Value was £265,000.00, which was £10,000 less than

- the Subject Property (before making a percentage reduction to allow for the proximity to the pig farm).
- 6.1.2 The property at 10 Leestone Road, Kilkeel had a habitable space of 255 m<sup>2</sup> which was some 16 m<sup>2</sup> smaller than the Subject Property and also had a 54 m<sup>2</sup> garage which was some 12 m<sup>2</sup> larger than the garage at the Subject Property. Its Capital Value was £255,000.00, which was £20,000 less than the Subject Property (again, before making a percentage reduction to allow for the proximity to the pig farm).
- 6.1.3 The property at 188B Carrigenagh Road, Kilkeel had a habitable space of 293 m<sup>2</sup> which was significantly larger than the Subject Property and also had a significantly larger garage measuring 62.5 m<sup>2</sup>. Its Capital Value was £290,000.00, which was £15,000 more than the Capital Value of the Subject Property (once again, before making a percentage reduction to allow for the proximity to the pig farm).
- 6.2 All of the comparable properties put forward by the Commissioner had unchallenged Capital Values. It was submitted on behalf of the Commissioner that the comparables supported The Respondent's contention that the Capital Value of the Subject Property "*should be assessed around £275,000*" and that it was "*fair and reasonable for the subject*". The Respondent's view was that "*A 5% allowance should then be adopted to reflect the negative effects of the pig farm. This equates to a Capital Value figure of £260,000*". (The Tribunal pauses to note that a 5% reduction from a figure of £275,000 would in fact result in figure of £261,250).
- 6.3 With regard to the appropriate percentage reduction to be applied with regard to the proximity of the Subject Property to the pig farm, Mr McGennity for the Respondent referred the Tribunal to the properties at 120 and 134 Carrigenagh Road Kilkeel. In the case of 134 Carrigenagh Road Kilkeel he informed the Tribunal that it was 40 metres from a working pig farm and that a 10% allowance had been awarded. In the case of 120 Carrigenagh Road Kilkeel he informed the Tribunal that it was 115 metres from a working pig farm and that again a 10% allowance had been awarded which in that case had been upheld by a previous decision of the Tribunal in the case of Seamus Cunningham v Commissioner of Valuation (2015). It was Mr. McGennity's contention that "*both of these properties are more adversely impacted than the subject, in particular 120 Carrigenagh Road which is just 40 metres from a pig farm which is in excess of 20,000 m<sup>2</sup> in size. The level of allowance to be adopted must therefore be smaller*".
- 6.4 Mr. McGennity for the Respondent also noted that properties at "*numbers 4 and 6 Ballinran New Road Kilkeel which are closer to the pig farm than the subject do not benefit from an allowance to reflect the negative impact of the pig farm*". In response to the Appellant's challenge to this evidence, he sought to rely upon the provisions of Article 54 of the 1977 Order which states that "*....any valuation shown in a Valuation List in respect of a*

*hereditament shall be deemed to be correct until the contrary is shown*". He also referred to the statutory assumptions contained within Schedule 12 to the 1977 Order which he contended rendered irrelevant the specific factors relating to those properties to which the Appellant had alluded.

## **7. The Tribunal's Decision**

- 7.1 Article 54 of the 1977 Order enables an Appellant to appeal to the Tribunal against the decision of the Commissioner as to Capital Value of a Subject Property. In this case the Capital Value has been assessed at the AVD at a figure at a figure of £275,000 with a further reduction to £260,000 to reflect the proximity to a pig farm. On behalf of the Commissioner, it has been contended that 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 The Tribunal is satisfied on the evidence that the initial assessment as to Capital Value has been carried out in accordance with the prescribed manner as set out Schedule 12 of the 1977 Order. The evidence submitted as to comparables and the submissions on behalf of the Commissioner lead the Tribunal to conclude that the correct statutory approach has been followed.
- 7.4 The Tribunal then turns to consider whether there is sufficient evidence in the arguments made by the Appellant to displace the statutory presumption.
- 7.5 In this case there were two issues for the Tribunal to consider. First, whether the Capital Value of the Subject Property is fair and reasonable in comparison to other properties in the Valuation List irrespective of any separate allowance to take account of the Subject Property's proximity to the pig farm and, second, what is thereafter the appropriate percentage allowance (if any) to be made in respect of that proximity to the pig farm?
- 7.6 Dealing with the first of these issues, the Tribunal carefully considered all of the evidence and submissions of the parties with regard to the comparable properties drawn to the attention of the Tribunal. Whilst the three comparable properties put forward for consideration on behalf of the

Commissioner in the Schedule to the “Presentation of Evidence” were all helpful, the Tribunal particularly noted the details of the comparable property at 68 Ballinran Road Killeel. It had a habitable space only marginally smaller than the Subject Property and a slightly larger garage than the Subject Property but had a Capital Value of £265,000 which was £10,000 less than that of the Subject Property’s £275,000 Capital Value (in each case before applying any allowance for proximity to the pig farm). Having considered this and also the details of the other two comparables referred to, the Tribunal finds on the balance of probabilities that the Capital Value of the Subject Property (before applying any allowance for proximity to the pig farm) should be reduced by £10,000 to £265,000 to bring it “into tone” with the Capital Values of the comparable properties relied upon on behalf of the Respondent.

- 7.7 Turning to the second issue regarding an appropriate allowance for proximity to the pig farm, the Tribunal had before it evidence regarding several properties in the locality, including the Subject Property, which were in proximity to pig farms. The Tribunal also had the benefit of the submissions of both parties regarding these properties and, having carefully considered the evidence and the submissions of the parties determined the following on the balance of probabilities -
- 7.7.1 The Subject Property, located on Ballinran Road, lies some 230 metres to the west of a pig farm which is located on Ballinran New Road. It is the odours from this pig farm which affect the Subject Property and in respect of which the Subject Property had the benefit of a 5% reduction from its Capital Value.
- 7.7.2 There are dwellings at numbers 4 and 6 Ballinran New Road which lie approximately half way between the Subject Property and the said pig farm on Ballinran New Road. Neither of these properties have the benefit of any percentage reduction in respect of their Capital Values to reflect their proximity to the said pig farm.
- 7.7.3 There is a dwelling at 68 Ballinran Road which is located further to the west of the said pig farm at Ballinran New Road than the dwellings at 4 and 6 Ballinran New Road and the Subject Property. It is approximately 350 metres from the said pig farm and has the benefit of a 5% reduction from its Capital Value to reflect its proximity to that pig farm.
- 7.7.4 There are two dwellings located at 120 and 134 Carrigenagh Road which are respectively located 40 metres to the west and 115 metres to the north of a pig farm which is on Carrigenagh Road. Each of these properties have the benefit of a 10% reduction in respect of their Capital Values to reflect their proximity to that pig farm.
- 7.8 The Respondent’s submission was that the pig farm on Carrigenagh Road was significantly larger than the pig farm on Ballinran New Road. The Respondent’s evidence was that the Carrigenagh Road pig farm was some 20,000 m<sup>2</sup>. The Appellant’s submission was that the piggery buildings on the Carrigenagh Road pig farm comprised no more than 50% of the total area of the pig farm. The Tribunal had no further detailed or



specific evidence before it regarding the respective sizes of the two pig farms referred to other than satellite images submitted in evidence by the Respondent showing the two pig farms. On the basis of the evidence available it is accordingly the view of the Tribunal that the pig farm at Carrigenagh Road is larger than the pig farm at Ballinran New Road.

- 7.9 The Tribunal had no evidence before it regarding the extent of odours caused by the Carrigenagh Road pig farm. It did however have evidence from the Appellant regarding the extent of odours from the pig farm at Ballinran New Road and the effect of those odours upon the Subject Property. The Appellant had submitted in evidence a copy of his "Record of Odours" which he had provided to the Environmental Health Department of Newry Mourne and Down District Council in respect of the month of April 2019 as referred to in paragraph 5.3 above. This set out a clear pattern of the effect of the pig farm odours on the Subject Property and of the prevailing easterly wind direction. This evidence was not challenged by the Respondent. Similarly, the Appellant's contention that the pig farm at Ballinran New Road had been the subject of an abatement notice served by Newry Mourne and Down District Council was also not contested by the Respondent. Accordingly, the Tribunal is persuaded by the Appellant's evidence regarding the significant impact on the Subject Property of the pig farm odours.
- 7.10 The question for the Tribunal is how to measure the effect of those odours on the Capital Value of the Subject Property in comparison to the other properties referred to. As referred to at paragraph 6.4 above, Mr McGennity correctly drew the Tribunal's attention to the provisions of Article 54 of and Schedule 12 to the 1977 Order. His evidence also indicated that the Commissioner of Valuation, in considering what allowance, if any, to make in respect of the Capital Value of a hereditament affected by odours from a pig farm, considers the distance from the pig farm and the size of the pig farm to be relevant factors. However, his evidence did not explain in any greater detail what further criteria (if any) are or should be considered to determine the percentage reduction to be applied to a hereditament or the methodology by which the appropriate percentage reduction is or should be determined as a result of the consideration of such criteria.
- 7.11 Clearly, in considering to what extent a hereditament is affected by odours, the distance from the pig farm which is the source of the odours is likely to be relevant. The size of the pig farm or, at any rate, the number of pigs which are kept on the pig farm may also be relevant. However, having considered the submissions of the Appellant, the Tribunal was also satisfied on the balance of probabilities that other factors, including the direction of an affected hereditament from such a pig farm and the prevailing wind direction and the manner in which such a pig farm is managed and operated by its owner, all also have the potential to contribute to or mitigate the extent of odours created by any individual pig

farm. Having carefully considered all of the evidence, the Tribunal found the Appellant's evidence persuasive regarding the comparative effect of pig farm odours upon the Subject Property in comparison to other properties in the locality in proximity to pig farms and determines, on the balance of probabilities, that the appropriate reduction to be applied to the Capital Value of the Subject Property to take account of this is 10%.

- 7.12 Having thus carefully considered the particulars and Capital Values of all of the comparable properties put forward by the Respondent and the evidence and submissions of the Appellant and the Respondent in relation to them, the Tribunal is satisfied on the balance of probabilities that the appropriate Capital Value Assessment of the Subject Property at the AVD of 1st January 2005 is £265,000.00 with a further reduction of 10% to £238,500 to take account of the proximity of the subject property to a pig farm.
- 7.13 Accordingly, the unanimous decision of the Tribunal is that the Appeal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 17<sup>th</sup> April 2019 is allowed and that the Capital Value of the property at 51 Ballinran Road, Kilkeel, Newry, Co. Down BT34 4JA be assessed at £238,500.00 and the Tribunal directs that the Valuation List be amended accordingly.

**Mr Alan Reid, Chairman  
Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties: 23 February 2021**