

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

CASE REFERENCE NUMBER: 32/21

CLAIRE TAYLOR - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND -RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr Christopher Kenton FRICS

Date of hearing: 21 June 2022, Belfast

DECISION

The unanimous decision of the tribunal is that the decision on appeal of the Commissioner of Valuation for Northern Ireland is upheld and the appellant's appeal is dismissed.

REASONS

Introduction

1. This is (subject to the observations made below) a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order"). This matter was listed for hearing on 21 June 2022.
2. Unfortunately, the lay member who was due to attend this hearing was unable to attend on the day due to illness. In accordance with Rule 4 of the Valuation Tribunal Rules (NI) 2007 hearings may be considered and determined by the Legal and the Valuation Member sitting together without a lay member with the consent of the parties. Both the Appellant's representative and the Respondent confirmed that they were content to the matter proceeding on this basis.

3. At the hearing of this matter the Appellant was represented by the Appellant's representative Mr Andy Thompson, who indicated that he is a retired chartered surveyor (MRICS), who had previously worked in England, acquiring over 30 years' experience as a Valuation Officer. The Respondent was represented by Mr Jeffrey and Ms Graham of the Respondent.
4. The hearing proceeded by way of a hybrid hearing in which the Legal Member of the Tribunal and the Appellant's representative (and the tribunal clerk) were present in the tribunal room and the Valuation Member and the representatives of the Respondent appeared by video link.
5. The hearing was conducted in accordance with the Northern Ireland Valuation Tribunal Remote Hearing Protocol dated 24 September 2020. All parties were content to proceed on this basis.
6. This appeal is in respect of the valuation of a property situated at Flat 1 (or Flat A) Ground Floor, 1 Kinnaird Terrace, Belfast, BT14 6BN (the subject property).

The Law

7. 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 does not intend in this decision to 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, as these provisions have been fully set out in earlier decisions of this tribunal.

The Evidence

8. The tribunal heard oral evidence. The tribunal had before it the following documents:
 - a. The Commissioner's Decision issued on 5 July 2021;
 - b. The appellant's notice of appeal signed by the appellant's agent;
 - d. A document entitled Presentation of Evidence dated 27 October 2021, prepared on behalf of the respondent by Marianne Graham, MRICS and submitted to the tribunal for the purposes of the hearing;
 - e. A document by the Appellant's agent entitled Response to the Respondent's Evidence dated 21 March 2022;
 - f. A document entitled LPS response dated 12 April 2022

- g. Correspondence between the parties and the tribunal office.
9. The tribunal is grateful to both parties for the way in which their respective cases was set out both in written and submissions made orally at the hearing. All of these were taken into account in arriving at the decision in this complex matter.

Background to this case.

10. Before outlining the respective submissions of the parties in this case it is necessary to go into the history of the case in some detail.
11. The subject property is an apartment in a block of five apartments known as 1 Kinnaird Terrace, Belfast. The property 1-7 Kinnaird Terrace was constructed in or around 1900 and originally consisted of four terraced houses. Each of these was reconfigured in or about 1994 to provide five self-contained apartments. The subject property is Flat 1 (or Flat A) 1 Kinnaird Terrace and is located on the ground floor. The apartments in 1 Kinnaird terrace were most recently refurbished in 2007.
12. The subject property is a converted ground floor apartment built in 1900 and refurbished in 2007. It has habitable space of 53.75m². The capital value has been assessed at £70,000.
13. This appeal follows on from a previous appeal to this tribunal in respect of another apartment in the same block. In *Andrew Thompson v Commissioner of Valuation*, (a decision of a differently constituted valuation tribunal), an appeal in respect of Flat D, 1 Kinnaird Terrace, Belfast, a third floor (fourth level) apartment in the same block as the subject property was upheld and the valuation of the apartment the subject of that appeal was revised to £40,000. In that case the tribunal had noted at para 15,
- “The Tribunal note, however that in focusing on properties in the same sate and circumstances as the subject property that there are inconsistencies of approach to similar properties within Kinnaird Terrace itself. The subject property is a third-floor apartment with a habitable space of 33.40m² and is valued at £50,000. However, four third floor Flats, namely, Flat 4, 9 Kinnaird Terrace, Flat 4, 11 Kinnaird Terrace, Flat 4, 13 Kinnaird Terrace and Flat 4 15 Kinnaird Terrace all have larger habitable space of 45m² a, with a difference of some 12m² and these have been assessed with a Capital Valuation of £50,000.”*
14. In that case the property the subject of the appeal had its capital valuation reduced to £40,000.
15. As a result of this case the Respondent altered the valuation of other upper floor apartments in the apartment block as set out later in this decision.
16. It is accepted that these adjustments were made in order to maintain tone of the list. However, no amendment was made to the subject property, which remained with a capital value of £70,000.

17. On 22 December 2020 the Appellant's representative submitted to the District Valuer that the valuation was excessive and a certificate confirming no change was issued on 28 May 2021. On 9 June 2021 an appeal was made to the Respondent that the capital valuation should be reduced to £56,000. However, a certificate of no change was issued on 5 July 2021.

The appellant's submissions

18. At the hearing of this matter the Appellant's representative confirmed that all the apartments in the block in which the subject property is located are 2 bedroom flats except Flat D which has one bedroom. It is admitted that all the apartments provide broadly similar accommodation save for Flat D which is one bed accommodation. However Flat A (the subject property) is notably larger than the others.
19. The Appellant's representative would state that Flat A is now grossly over-assessed in terms of its capital value.
20. He goes on to state that the capital value of the subject property should be reduced in order to maintain the relationship between the capital values of the various floors as it is now inconsistent with this. He has used a breakdown of the existing assessments to produce a price per m2 and then calculated an amended capital value to illustrate what it should be as outlined in the tables below:
21. The original assessments in the 2007 capital value list for 1 Kinnaird Terrace were stated to be as follows:

Apt	Accommodation	Area (m2)	Original CV	£ per m2
1 or A	2 bedroom	53.75	£70,000	1302
2 or B	2 bedroom	38	£55,000	1447
3 or C	2 bedroom	38	£55,000	1447
4 or D	1 bedroom	34	£52,500	1544
5 or E	2 bedroom	34.5	£52,500	1522

22. The Appellant's representative then illustrates what he refers to as current assessments and his proposed revision of that for Apt 1 following the previous Valuation Tribunal decision and other alterations as follows:

Apt	Accommodation	Area (m2)	Adjusted CV	£ per m2	
1 or A	2 bedroom	53.75	£70,000	1302	Current assessment
1 or A	2 bedroom	53.75	£56,000	1042	Appellant's proposed assessment.

2 or B	2 bedroom	38	£45,000	1184	
3 or C	2 bedroom	38	£45,000	1184	
4 or D	1 bedroom	34	£40,000	1176	
5 or E	2 bedroom	34.5	£42,500	1232	

23. The Appellant's representative contends that the original capital values were reasonably consistent with one another. The apartments provide comparable accommodation with the only difference being their size. Apartment 1 (the subject property) is significantly larger and should devalue to a significantly lower rate per m². He suggests that it should have a revised CV of £56,000 a reduction of 20% in line with the other revisions. He admits that it probably should be less but is settled on a figure of £56,000.
24. In response to the Respondents reference to the case of *Ahmed v Commissioner of Valuation* (referenced later in this decision), the Appellant's representative would state that devaluation of comparable evidence by reference to floor area is a fundamentally a well-established technique recognised and applied by all valuation surveyors. He would state that it is only a factor influencing its value and other factors of equal significance are location, age, quality and accommodation among others. The valuer will look for comparables but where there are variations, adjustments have to be made.
25. The Appellant's representative would contend that the best comparables are those in the same apartment building – as these are identical and all 2 bed flats (save D) and all converted at the same time. The only difference apart from floor level (for which he says local tone makes no distinction) is floor area. Therefore, it makes sense to value accordingly.
26. Therefore, the Appellant's representative would state that devaluation is particularly important in a case such as this where the best comparables in the same building vary only by size.
27. In relation to the respondent's comparables, the Appellant's representative states that comparables 1-7 are all very similar to the subject property. In all, eight terraced houses at 1-15 Kinnaird Terrace were converted into flats. All eight-ground floor flats are very similar. They should have all the same capital value assessment and were all included in the valuation list at £70,000. He would contend in this appeal that the issue is that the capital value of all these properties are all wrong. Flat D had similar characteristics to other properties elsewhere in Kinnaird Terrace which were quoted in the hearing in *Thompson v Commissioner of Valuation*. Following the successful appeal, the respondent reduced the assessments of those properties.
28. Comparables 8-11 concern other ground floor flats in the wider locality and are broadly similar and have a capital valuation of £70,000. The Respondent contends that there is a tone of the list which supports this level of assessment. The Appellant's representative would suggest that this is a fallacy as there is no consistent tone of the list in this locality - a fact which became apparent in the appeal on Flat D.

29. The Appellant's representative lists a further selection of flats of similar size in the locality which have quite different levels of assessment. Those referred to were:

1. Flat 1, 140 Antrim Road, Belfast, BT14 2AH, a ground floor converted flat, similar age to the subject property, approximately 0.2 miles from the subject property, with an area of 58m² and a capital value of £50,000.
2. Flat 1, 142 Antrim Road, Belfast, BT14 2AH, a ground floor converted flat, similar age to the subject property approximately 0.2 miles from the subject property with an area of 57.82m² and a capital value of £50,000.
3. Flat 1, 146 Antrim Road, Belfast, BT14 2AH, a ground floor converted flat, similar age to the subject property approximately 0.2 miles from the subject property with an area of 59m² and a capital value of £50,000.
4. 13A Thorndale Avenue, Belfast BT14 8BJ, a ground floor converted flat, similar age to the subject property approximately 0.1 miles from the subject property with an area of 54m² and a capital value of £45,000.
5. Flat 1, 3 Duncairn Avenue, Belfast BT14 6BP, a ground floor converted flat, similar age to the subject property approximately 0.1 miles from the subject property with an area of 50.73m² and a capital value of £45,000.
6. Flat 1, 3 Cliftonville Avenue, Belfast BT14 6GX, a ground floor converted flat, similar age to the subject property approximately 0.5miles from the subject property with an area of 57m² and a capital value of £45,000.
7. Flat 1, 11 Cliftonville Avenue, Belfast BT14 6GX, a ground floor converted flat, similar age to the subject property approximately 0.5 miles from the subject property with an area of 55m² and a capital value of £45,000.
8. Flat 1, 17 Cliftonville Avenue, Belfast BT14 6GX, a ground floor converted flat, similar age to the subject property approximately 0.5 miles from the subject property with an area of 56m² and a capital value of £45,000.

The respondent's submissions

30. The respondent put forward several comparables in relation to the subject property as follows:

1. Flat 1, 3 Kinnaird Terrace, Belfast, BT14 6BN, a ground floor converted apartment within the same block as the subject property having habitable space of 60m² and a capital value of £70,000.

2. Flat 5, 5 Kinnaird Terrace, Belfast, BT14 6BN, a ground floor converted apartment within the same block as the subject property having habitable space of 55m² and a capital value of £70,000.
3. Flat 1, 7 Kinnaird Terrace, Belfast, BT14 6BN, a ground floor converted apartment within the same block as the subject property having habitable space of 52.83m² and a capital value of £70,000.
4. Flat 1, 9 Kinnaird Terrace, Belfast, BT14 6BN, a ground floor converted apartment on Kinnaird Terrace adjacent to the subject block having habitable space of 59m² and a capital value of £70,000.
5. Flat 1, 11 Kinnaird Terrace, Belfast, BT14 6BN, a ground floor converted apartment on Kinnaird Terrace adjacent to the subject block having habitable space of 58m² and a capital value of £70,000.
6. Flat 1, 13 Kinnaird Terrace, Belfast, BT14 6BN, a ground floor converted apartment on Kinnard Terrace, adjacent to the subject block having habitable space of 59m² and a capital value of £70,000.
7. Flat 1, 15 Kinnaird Terrace, Belfast, BT14 6BN, a ground floor converted apartment on Kinnard Terrace, adjacent to the subject block having habitable space of 59m² and a capital value of £70,000.
8. Flat 1, 122 Antrim Road, Belfast, BT15 2AH, a ground floor converted apartment, 0.1 miles from the subject and having a habitable area of 57m² and a capital valuation of £70,000.
9. Flat 1, 114 Antrim Road, Belfast, BT15 2AH, a ground floor converted apartment, 0.1 miles from the subject and having a habitable area of 59.16m² and a capital valuation of £70,000.
10. Flat 1, 112 Antrim Road, Belfast, BT15 2AH, a ground floor converted apartment, 0.1 miles from the subject and having a habitable area of 57.52m² and a capital valuation of £70,000.
11. Flat 1, 101 Antrim Road, Belfast, BT15 2AH, a ground floor converted apartment, 0.1 miles from the subject and having a habitable area of 57m² and a capital valuation of £70,000.
31. The Respondent referred to the decision of *Ashraf Ahmed v Commissioner of Valuation* in which it argued that the tribunal held that the capital value of a property cannot be determined or compared with the capital value of another by comparing its size and arithmetically calculating the capital value per m² of a property. It must instead have regard to the capital values in the list and therefore

- look at comparable hereditaments in the same state and condition as the subject property.
32. The Respondent would state that the subject is significantly larger than the other apartments in the building. The upper flats are not in the same state and circumstances as the subject and are therefore unsuitable as comparisons.
 33. The Respondent would state that the ground floor flats in Kinnaird Terrace are unchallenged. The seven flats close proximity to the subject more or less identical in terms of their character and size and must be acknowledged in assessing capital value of the subject property.

The Tribunal's Decision

34. Article 54 of the 1977 Order enables a person who is dissatisfied with the Respondent's valuation to appeal to this tribunal. In this case the capital value of the subject property has been assessed at a value of £70,000. On behalf of the Respondent, it has been contended that this figure is fair and reasonable in comparison to other properties.
35. It is appropriate to remember that there is a statutory presumption in article 54(3) of the 1977 Order in terms that "On appeal under this article, any valuation shown in the 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 displace that presumption, or perhaps the Respondent's decision to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.
36. It is also important to state the basis on which valuations have to be assessed in the legislation. This has already been set out in both decisions of this tribunal and also indeed by the Lands Tribunal. As has been pointed out in recent decision of the Lands Tribunal in *RZ v Commissioner of Valuation* (VT/2&3/2016 [2017]) the tribunal in deciding cases derives assistance from the following cases:

McKeown Vinters Limited v Commissioner of Valuation

When, however, a revision of an entry in a valuation list is under consideration, different principles come into play; in particular paragraph 2(1) and the concept of comparable hereditaments. The reason is simple. The very completion of the list, at general revaluation, by itself creates comparables and paragraph 2(1) can begin to play its role. That role is this; There can, as the Tribunal has already stated, be no challenge to the principles applied at general revaluation. Any challenge before the Lands Tribunal must be of way of an application for revision of an entry already in the list. As time progresses, if actual rental levels and turnover figures were used for the revision of a particular entry in the valuation list, it would inevitably result in that entry being increased to a level significantly higher than other entries in the list. There must therefore be a limiting factor, and this is provided by paragraph 2(1) which, in essence, produces what is often termed a "tone of the list", and which ensures fairness and uniformity. It does this by providing that at revision stage regard "shall be had" to the net annual values

in the valuation list of comparable hereditaments. Its role will be discussed in greater detail later. Suffice to say that the significance of this role increases with the passage of time...

In the subject reference for paragraph 2(1) read paragraph 7(2) for net annual value read capital value and for rent/ rental levels read capital value/ capital value levels"

A-Wear Limited v Commissioner of Valuation VR/3/2001.

The early days are important and the Tribunal agrees with Mr Hanna that the practical reality is that, if entries are not challenged, or if challenges are abandoned, the point will have been reached within a relatively short space of time at which it would have to be said that these settlements establish a reliable Tone of the List for the hereditaments in a location or category. At that stage, although still a question of balance, by virtue of paragraph 2 of schedule 12, a district valuer is almost obliged to apply that level. Skilled assessment based on proper research may justify an adjustment or allowance in individual cases, but the Tone of the List provision, although protecting ratepayers from unfairness resulting from inflation, does make anything other than a first phase challenge difficult.

Elias Alatrimcham Properties v Commissioner of Valuation VR/15/2011

For the following reasons the tribunal is not persuaded that Mr Elias has succeed in displacing the presumption that the valuations shown in 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... the time the List came into operation, apart from one exception, the assessments were not challenged."

37. In his submissions the Appellant's representative made reference to the fact that the valuation of the property at Flat D, 1 Kinnaird Terrace Belfast has been revised to £40,000 as a result of the decision of the Valuation Tribunal in *Thompson v Commissioner of Valuation* in 2018. As a consequence of this, the capital values of the rest of the apartments in the building were changed, save for the subject property. This it is suggested means that the subject property is now inconsistent with the rest of the apartments in this building. To illustrate the point the Appellant's representative has submitted a table showing the capital valuations of the apartments in the building and their size and calculating the area per m2 of the various apartments as follows:

Apt	Accommodation	Area (m2)	Original CV	£ per m2	Adjusted CV	£ per m2
1 or A	2 bedroom	53.75	£70,000	1302	£70,000	1302

2 or B	2 bedroom	38	£55,000	1447	£56,000	1184
3 or C	2 bedroom	38	£55,000	1447	£45,000	1184
4 or D	1 bedroom	34	£52,500	1544	£45,000	1176
5 or E	2 bedroom	34.5	£52,500	1522	£42,500	1232

38. The Appellant's representative uses this table to show that the subject property with a capital valuation of £70,000 is now inconsistent with the other apartments in this building. He submits that the subject property should have a capital valuation of £56,000. He would state that these comparables are almost perfect in that they are in the same building, are accommodation of 2 bed flats (except flat D) and were all converted at the same time. The only difference apart from floor level is floor area. He further contends that devaluation by floor area is an established valuation technique which may be appropriate depending on the nature of the case. It is particularly appropriate in a case where the very best comparables in the same building only vary in terms of size.
39. As against this the Respondent states that the capital value of a property must be assessed in that regard must be had to the capital values in the valuation list of comparable hereditaments in the same state and circumstances as the subject property. Reference is made by the Respondent to a previous decision of this tribunal in *Ashraf Ahmed v Commissioner of Valuation*. The Respondent considers that this is authority for the proposition that it is not permissible to use an arithmetic calculation to show that properties with different capital values per m2 should be adjusted.
40. This tribunal has considered the case of *Ahmed v Commissioner of Valuation*. In that case the Appellant contended that the capital value of the subject property should be reduced as there were different values per m2 compared to two other properties. In that case the tribunal said "...the tribunal does not accept that the capital value of a property can be determined or compared with the capital value of another property by comparing its size and capital value and arithmetically calculating the capital value per m2 of either property."
41. In commenting on this case, the Appellant's Representative suggests that the Respondent's approach to it is incorrect and should not be taken as applying a valuation principle. In *Ahmed*, the tribunal found that the other comparables were preferable in terms of size, age, location and style being identical to the appeal property apart from some integral garages having been converted to living accommodation. The larger, older property was rejected by the tribunal as it saw little value in looking at the older detached house when valuing a nearly new terraced property.
42. The tribunal has carefully considered the decision in *Ahmed v Commissioner of Valuation*. It states that the correct basis of valuation is that set out in the legislation. The Respondent in its submissions does admit that the approach of the tribunal in *Ahmed* was to prefer certain comparables to other comparables rather than to accept an arithmetic calculation. This tribunal agrees with that approach.

43. The approach to valuation must be that contained in the legislation as outlined above. Therefore, this tribunal rejects the Appellant's representative's argument that it is permissible to revalue a property in accordance with the approach of an arithmetic calculation as he has suggested.
44. The next question for the tribunal to consider is in relation to the comparables submitted to the tribunal by the Appellant and the Respondent respectively.
45. The Respondent offered eleven properties stated to be comparable to the subject property. The first three of these are located in the same block as the subject property. The next four are adjacent to the subject property. The final four are stated to be approximately 0.1 miles from the subject property. Given that some of the comparables chosen by the Appellant were located 0.1 miles from the subject property (comparables 8 to 11 as listed above), the Respondent was asked how the comparables chosen by them were arrived at. It was confirmed that a search of properties in the area would be carried out. These would usually be properties in the same ward or streets closest to the subject property.
46. In relation to the comparables 1-7 (those located in Kinnaird Terrace) the Appellant's representative stated that they are all very similar to the subject property and that he would state that they are all incorrect.
47. In this case the Appellant offered eight properties stated to be comparable to the subject property, some of which are approximately 0.1 miles from the subject property (comparables 4 and 5).
48. In this case the tribunal prefers the comparables forwarded by the Respondent. Comparables 1- 3 are located in the same block as the subject property. They are of comparable size and all have capital valuations of £70,000. The capital valuation of the subject property is also supported by comparables 4-7 which are located adjacent to the subject block. There is also support for the capital valuation from comparables 8—11.
49. Examining all the material facts to be derived from the evidence, the tribunal's considered and concluded view and determination is that the Appellant has not made out a sufficiently persuasive or strong case to displace the correctness of the capital valuation of £70,000 attributed to the subject property. For this reason, the Appellant's appeal cannot succeed and by unanimous decision, the appellants' appeal is dismissed by the tribunal.

Signed Mr Charles O'Neill (Chairman)

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 09/11/2022