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: NIVT 2/18

SREG LIMITED – APPELLANT

AND

COMMISSIONER OF VALUATION -RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr D McKinney FRICS and Dr P Wardlow

Date of hearing: 30 March 2021, Belfast

DECISION ON REVIEW

The unanimous decision of the tribunal is that there are no proper grounds made out by the appellant to enable the tribunal to review the decision of the tribunal issued on 4 December 2019 and thus the tribunal's decision is affirmed and the appellant's application for review is dismissed.

REASONS

Introduction

1. This is an application for review of a decision of this tribunal (the decision) in respect of a reference under Article 54 of the Rates (NI) Order 1977 as amended (the 1977 Order). The decision was issued to both parties by the Secretary to the Northern Ireland Valuation Tribunal (the tribunal) on 4 December 2019.

2. The appellant's solicitor by letter (the review letter) dated 20 December 2019 requested a review of the decision of the tribunal.

3. The review was listed for hearing on 30 March 2021. Both parties agreed that the matter would be determined by written submissions.

The law

4. The Valuation Tribunal Rules (NI) 2007 (the Rules), as amended, provide at rule 21 as follows in respect of the review of any decision of the tribunal:

   "21-(1) If, on the application of a party or its own initiative, the Valuation Tribunal is satisfied that-

   (a) its decision was wrong because of an error on the part of the Valuation Tribunal or tis staff, (the first ground) or

   (b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had good reason for failing to be present or represented (the second ground) or

(c) new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; (the third ground) or

(d) the interests of justice require (the fourth ground)

the Valuation Tribunal may review the relevant decision."

5. The nature of a review application of a decision of the tribunal is that the appellant has in the first instance to establish proper grounds upon which the tribunal might proceed to review the decision. If such grounds are not established, then the matter cannot proceed to a review.

6. The appellant makes the point that he would have thought that the request for a review by the appellant would have brought correspondence to a close on the application for a review. However, the Valuation Tribunal Rules state, at Rule 21, the parties shall have an opportunity to be heard on any application or proposal for review under this rule. Therefore, both parties made submissions in relation to the application for a review.

The appellant's submissions

7. In his submissions to the tribunal in respect of this application for review the appellant has raised several matters as outlined below. This can of necessity only be a summary of the full submissions made by the appellant. However, all the evidence given by the appellant in each of his submissions was fully taken into account in arriving at this decision.

8. In his first submission for a review, the appellant refers to a document entitled Report to the Commissioner of Valuation in relation to 11 Sixmilewater Mill Walk, Antrim (the redacted report) which he states was produced to the tribunal at the hearing of this matter and has not been referred to in the tribunal's decision. He states that the appeal in respect of this property (No 11) is very significant because the respondent did not alter the decision of the capital value in respect of this property but it did result in a recommendation that the capital value of other houses in the same development including the subject property be revised and the appeal states that the criteria for changing the capital value is a simply size formula under a categorisation of either semi-detached or terraced houses. At the hearing of this matter, the appellant queried whether the valuer who submitted the Presentation of Evidence for the case involving the subject property had involvement in the redacted report.

9. The appellant secondly refers to a document which is referred to as a Presentation of Evidence dated 28 June 2018 relating to 11 Sixmilewater Mill Walk, Antrim which he had only become aware of after the conclusion of the hearing in this matter.

10. The appellant thirdly submits that under the *McKeown* decision of the Lands Tribunal the proper basis for valuation is that the respondent shall have regard to the capital values of comparable houses in the same state and circumstance. He would state that proper comparability did not form part of this revision of the subject property in this case. The appellant states that the decisions of the tribunal make it clear that the capital value of a property cannot 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 m^2 of other property.

11. In his fourth submission, the appellant refers to the fact that the respondent had used aerial photography in the calculation of the Gross External Area of the subject property. The GEA of the property as found by the respondent was stated to be 114.6m^2. The appellant organised his own report of the GEA of the subject property. The attached report by his own surveyor (which is dated 16 December 2019) states that the GEA of the property is 113.91m^2. Therefore, he suggests that on the respondent's simplistic size formula the capital value of the subject property should be £90,000. The appellant also states that the new evidence also illustrates that the respondent's GEA evidence should be treated with caution.

12. Fifthly, the appellant contends that the use of 4 Sixmilewater Mill Walk as a comparable by the tribunal to justify the revision of the subject property is fundamentally flawed as it was revised contemporaneously with and following the result of the respondent's decision in 11 Sixmilewater Mill Walk. The appellant would state that the evidential capital value of 4 Sixmilewater Mill Walk is the value before it was revised. The capital value of no 4 was £110,000 before the review and it was increased to £120,000 on the review. The appellant states that the other comparables given by the tribunal in its decision (No 1 and No 2 Sixmilewater Mill Road) are also revisions made contemporaneously and as evidenced by the photographic evidence may not be considered to be in the same state and circumstance and the post revision of the capital value is inappropriate. The capital values of these vastly superior houses were revised and increased to £120,000 and £125,000 respectively.

13. Sixthly, the appellant states that the sale prices of 25 and 28 Sixmilewater Mill Drive were not given to show the antecedent value of the subject property but were merely given to demonstrate that a terrace house of the same size in the area over the years and at the time of the revision could have in or about the same value. In other words, there is no great differential in Sixmilewater Mill which could create different values between semi-detached houses and terraced houses in the same development.

14. In referring to the discussion in *McKeown*, in his seventh submission, the appellant agrees that it is the leading case in the area of valuation appeals and is authority for the difficulty in displacing values given in the valuation list particularly after a period of time. However, he would argue that in this case the appeal is not a challenge by the appellant to the 1 January 2005 valuation. It arises from a revision undertaken by the respondent who had unilaterally and at its own volition changed the capital values that had been established and effective from 1 January 2005 in Sixmilewater Mill. The appellant was of the view that regardless of *McKeown* and the difficulty in displacing a capital value made in a general valuation list if NIVT decided that this was a displacement situation then all the 2005 values of Sixmilewater houses were much too high and there could be no case for any capital value increases.

15. In his eighth submission, the appellant states that *McKeown* makes it clear that for the purposes of any revision list the respondent has to have regard to the capital values in the valuation list of comparable properties. He also refers to the *A-Wear* and *Elias* cases as being authority for the difficulty in displacing an original valuation in an inflationary era. He would suggest that they are also authority for the proposition that if there are no proper comparables, then regard may be had to other information that might be helpful. In this regard, house sales and house price rise was intended to be additional data which the NIVT may find helpful in the absence of proper comparable data.

16. The appellant suggests, in his final submission, that the comparables used by the NIVT were not proper comparables. In short, he would argue that the capital value of the subject property should have been revised to £108,000.

The respondent's submissions

17. In this case the respondent states that the redacted report in respect of 11 Sixmilewater Mill Walk was issued to the appellant by the respondent on 19 November 2018 under a freedom of information request. The report was not submitted to the tribunal by the respondent as it was not considered to be relevant. Moreover, a copy of the report was submitted to the tribunal by the appellant as part of the earlier submissions to the tribunal.

18. In relation to the redacted report the respondent states that the discussion in relation to the redacted report related to the author of the document rather than whether not the respondent's representative had knowledge of it.

19. In relation to the Presentation of Evidence for 11 Sixmilewater Mill Walk, the respondent states that this was not presented to the tribunal as part of the respondent's submission as it related to a separate appeal to the tribunal and was not considered to be relevant as it relates to a different property, of different type, different gross external area etc. The respondent states that this Presentation of Evidence is not new evidence pertinent to the appeal for the subject property.

20. The respondent states that both aerial photography and building control surveys were used to check the GEA of properties in the Sixmilewater Development. The GEA of the property was held to be correct. The report by the appellant's surveyor details the GEA of the subject property as 113.91m^2 rather than 114.6m^2. The respondent would state that the difference in the GEA of 0.69m^2 is not value significant.

21. The respondent states that comparable evidence was relied upon to value the property in accordance with the statute as is clearly documented in the Presentation of Evidence submitted to the tribunal. The issue was discussed at length during the hearing and the suggestion that the property had been valued by adopting an arithmetic calculation was refuted. The table in the redacted report detailing £/m2 pricing was merely illustrating the relatively between capital values of different properties. On this basis, the capital value assessed is considered to be fair and reasonable in comparison to similar properties in the valuation list. The respondent objects to the request for a review.

The tribunal's determination of the issues

22. As has been stated earlier, there are four possible grounds on which to base an application for a review of a decision of the Valuation Tribunal. The tribunal has assessed each of the appellant's submissions against each of the relevant grounds as a whole.

23. In respect of the second ground for review, that a party who was entitled to be heard at a hearing but failed to be present, had good reason for failing to be present or represented, the appellant was present at a full and substantial hearing of this matter.

Therefore, there is no reason that the appellant should succeed on this ground of application for review in respect of his submissions made in his application for a review.

24. At this point it is worth pointing out that the review procedure is not intended to be a second bite at the cherry, for an appellant who feels he has not submitted his best case to the tribunal to have another go.

25. Much of the submissions made by the appellant in respect of his application for review relates to the rating history of the property at 11 Sixmilewater Walk, Antrim, which is located in the same development as the subject property. The appellant refers to a document entitled Report to the Commissioner which relates to No. 11 (the redacted report) which he states was produced to the tribunal at the hearing of this matter and has not been referred to in the tribunal's decision. He states that this appeal (that of No 11) is very significant because the respondent did not alter the decision of the capital value in respect of this property (No 11) but it did result in a recommendation that the capital value of other houses in the development including the subject property should be revised and the document states that the criteria for changing the capital value is a simply size formula under a categorisation of either semi-detached or terraced houses. He also queried whether the valuer who submitted the Presentation of Evidence in this case had any involvement in the redacted report. The respondent states that at no stage did the valuer state that she could not give any help or assistance with the report.

26. The appellant had included reference to this redacted report dated 20 November 2017 in his response to the LPS Addendum of Evidence, so this information was before the tribunal at the hearing of the matter. As was outlined in the decision of the tribunal the appellant had submitted very detailed submissions to the tribunal and the decision could only set out a summary of the appellants case but all papers submitted by the appellant were considered in arriving at its decision.

27. In this case, there was a very brief reference to knowledge of the redacted report at the very end of the hearing as the matter was being wound up. In this case the tribunal confirms that the authorship of the report was not material in the decision making of the tribunal and the tribunal had considered the contents of the redacted report as part of its overall consideration of this case.

28. When considering the first ground for a review the tribunal has found the decision in *Crawford* v *Commissioner of Valuation* (39/15), a previous decision of the Valuation Tribunal, helpful. The tribunal in that case stated, in relation to Rule 21(1)(a):

    "The review procedure under this head is designed to correct obvious and fundamental flaws which arose because of human error, errors which when pointed out, are self evident, patent and objectively clearly erroneous. It is impossible to conjure up an exhaustive list of the type and nature of errors, which may be relevant but if a Statement of Case failed to be included or dealt with at an appeal or if the body of one decision somehow became attached to the title of a different decision, such are the types of error which would entitle any party, or the NIVT of its own initiative to seek a review."

29. Applying this first ground for review, the first submission forwarded by the appellant, there is nothing that comes under the ground of obvious and manifest error in the decision.

30. In relation to the third ground for review this ground relates to new evidence, to which the decision relates, that has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then. In relation to the redacted report, this was included in the appellant's evidence before the tribunal at the hearing of the matter and so this ground does not apply in relation to this document. The issue of the amendment of capital values in a number of properties in the development was also referred to in the Presentation of Evidence issued by the respondent in this matter and was addressed at the hearing of this matter.

31. The question of where it would be appropriate to review a matter under the final ground in the interests of justice has been considered by the tribunal in other cases, notably in *Cairns* v *Commissioner of Valuation*. In that case the President of the Valuation Tribunal concluded:

    "In the absence of any identified authority within the tribunal's own jurisdiction being drawn to the tribunal's attention, the tribunal is of the view that the interests of justice ground ought properly to be construed fairly narrowly, that certainly appears to be the accepted practice in other statutory tribunal jurisdictions. Thus the interests of justice ground might, for instance, be seen to apply to situations such as where there has been some type of procedural mishap…. Generally it is broadly recognised that the interests of justice in any case must properly encompass doing justice not just to the dissatisfied and unsuccessful party who is seeking a review but also to the party who is successful. Further, there is an important public interest in finality of litigation. The overriding objective contained within the tribunal's rules also bears upon the matter."

32. In the light of this, there is nothing in the applicant's submission that would warrant a review of the decision on this ground.

33. The second submission by the appellant relates to a document which is referred to as a Presentation of Evidence dated 28 June 2018 relating to 11 Sixmilewater Mill Walk, Antrim which he states he had only become aware of after the conclusion of the hearing in this matter. This Presentation of Evidence related to 11 Sixmilewater Mill Park, and the appellant argues that it showed the size and categorisation criteria proposed in the redacted report had been used in another appeal and that the respondent had used comparables including those in Moylena Grove which were rejected by the tribunal as proper comparables.

34. In relation to this, the respondent would state that this is a confidential document relating to a different appeal and so was not new evidence pertinent to the appeal in relation to the subject property.

35. The tribunal finds that, in the words of the appellant in his submission, No 11 Sixmilewater Mill Walk "relates to the CV appeal of a different animal (a three storey "terrace" Sixmilewater Mill townhouse)". It relates to a different type of property. Furthermore, the issue relating to comparables was well rehearsed by both the appellant and the respondent at the hearing of this matter. Therefore, there are no grounds for a review on the first ground in that there is nothing that comes within the heading of an obvious and manifest error.

36. In relation to the third ground for review, it is true that this is evidence that has been brought to the attention of the tribunal by the appellant, after the hearing, albeit that the report is dated 28 June 2018. However, to succeed on this third ground for review, the evidence has to be new evidence *to which the decision relates* which could not

have reasonably been known or foreseen before the hearing. In this case the respondent contends that this evidence is not new evidence pertinent to this appeal.

37. In this case the tribunal finds that the document entitled Presentation of Evidence in relation to 11 Sixmilewater Mill Park relates to a property which is different to the subject property, as admitted by the respondent as it is a three storey terraced house whereas the subject property is a semi-detached house. The issue of comparable properties was well rehearsed during the hearing in any event.

38. Furthermore the issue of 11 Sixmilewater Mill Walk was considered in that it was the subject of the redacted report. Therefore, the tribunal has come to the conclusion that this Presentation of Evidence is not new evidence to which the decision relates and therefore the appellant does not succeed in his request for a review on this ground in relation to this submission.

39. In relation to the fourth ground for review the tribunal finds that there is no ground for review in respect of this submission.

40. The appellant states in his third submission that under the decision of *McKeown Vintners Limited* v *Commissioner of Valuation*, a decision of the Lands Tribunal, the proper basis for valuation is that the respondent shall have regard to the capital values of comparable houses in the same state and circumstance. He would state that proper comparability did not form part of this revision of the subject property in this case and that the respondent used the size and criteria of the properties to decide the capital value of the subject property. As against this, the respondent would state that it had acted in accordance with the statue and had not adopted an arithmetic calculation approach to calculating the capital value of the subject property.

41. As can be seen from the decision the tribunal considered the comparables put forward by the respondent and indeed the comparables put forward by the appellant. Therefore, the tribunal was satisfied that the capital value of the subject property was established by the correct method as set out in statute. Therefore, there is no ground for a review on the ground of obvious and manifest error. There was a consideration of this issue at the hearing and therefore there is no new evidence that would not reasonably have been known at the hearing. There is also no ground for a review on the basis of the interests of justice in relation to this submission.

42. The appellant refers to the fact that the respondent had used aerial photography in the calculation of the Gross External Area of the subject property. The GEA of the property as found by the respondent was stated to be 114.6m^2. The appellant organised his own report of the GEA of the subject property. The attached report by his own surveyor (which is dated 16 December 2019) states that the GEA of the property is 113.91m^2. Therefore, he suggests that on the respondent's simplistic size formula the capital value of the subject property should be £90,000. The appellant also states that the new evidence also illustrates that the respondent's GEA evidence should be treated with caution.

43. The respondent states that both aerial photography and building control surveys were used to check the GEA of properties in the development of which the subject property forms part. The respondent states that the difference in the GEA as measured by the respondent and the appellant's surveyor is only 0.69m^2 and is not value significant.

44. The tribunal accepts that there is a difference in the two measurements of the GEA and finds this difference to be negligible for these purposes and not to make a

difference to the assessment of the capital valuation. Therefore, there is no ground for a review on the basis of the first ground – obvious and manifest error. In relation to the third ground – that this is new evidence – the tribunal finds that this is not new evidence that has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then. Furthermore, this does not warrant a ground for review on the interests of justice ground.

45. The appellant contends that the use of 4 Sixmilewater Mill Walk as a comparable by the tribunal to justify the revision of the subject property is fundamentally flawed as it was revised contemporaneously with and following the result of the respondent's decision in another case. The appellant would state that the evidential capital value of 4 Sixmilewater Mill Walk is the value before it was revised. The capital value of no 4 was £110,000 before the review and it was increased to £120,000 on the review. The other comparables given by the tribunal in its decision (No 1 and No 2 Sixmilewater Mill Road are also revisions made contemporaneously and, as evidenced by the photographic evidence, may not be considered to be in the same state and circumstance and the post revision of the capital value is inappropriate. The capital values of these vastly superior houses were revised and increased to £120,000 and £125,000 respectively.

46. The tribunal is satisfied that the assessment of capital value in respect of the subject property has been assessed in accordance with the requirements of the relevant statute and the principles in relevant case law such as the *McKeown* case. The legislation states that regard shall be had to the capital values in the valuation list of comparable hereditaments in the same state and circumstance. In this case regard was had to comparables No 4 and No 2 Sixmilewater Mill Walk at their capital values in the valuation list at the time of consideration i.e. at the time of the hearing of the appeal in relation to the subject property. The capital values of these properties at that time were £120,000.

47. Therefore, this submission does not warrant a ground for review on any of the grounds of obvious and manifest error, new evidence or the interests of justice.

48. The appellant states that *McKeown* makes it clear that for the purposes of any revision list the respondent has to have regard to the capital values in the valuation list of comparable properties. He also refers to the *A-Wear* and *Elias* cases as being authority for the difficulty in displacing an original valuation in an inflationary era. He would suggest that they are also authority for the proposition that if there are no proper comparables then regard may be had to other information that might be helpful. In this regard, house sales and house price rise was intended to be additional data which the NIVT may find helpful in the absence of proper comparable data.

49. In relation to this submission, the tribunal notes the reference to the cases of *A-Wear Limited* v *Commissioner of Valuation* (VR 3/20001) and *Elias Altrincham Properties* v *Commissioner of Valuation* (VR 15/2011) in relation to the consideration of what is referred to as the tone of the list. The tribunal is satisfied that there was sufficient comparable information on which to base its decision. Therefore, it is not necessary to consider the place of other evidence such as house sales and house price rises as the tribunal was satisfied that there is sufficient evidence on which it could base its decision. Therefore, the appellant has not made out sufficient cause for a review on the grounds of obvious and mainifest error, new evidence or the interests of justice in relation to this submission.

50. Sixthly, the appellant states that the sale prices of 25 and 28 Sixmilewater Mill Drive were merely given to demonstrate that a terrace house of the same size in the area over the years and at the time of the revision could have in or about the same value. In other words there is no great differential in Sixmilewater Mill which could create different values between semi-detached houses and terraced houses in the same development.

51. In this regard, the tribunal is satisfied that the assessment of capital value was conducted on the appropriate basis and therefore this does not give grounds for review under any of the grounds in the Valuation Tribunal Rules.

52. In referring to the discussion in *McKeown*, in his seventh submission, the appellant agrees that it is the leading case in the valuation of appeals particularly after a period of time. However, he would argue that in this case the appeal is not a challenge by the appellant to the 1 January 2005 valuation. It arises from a revision undertaken by the respondent who had unilaterally and at its own volition changed the capital values that had been established and effective from 1 January 2005 in Sixmilewater Mill. The appellant was of the view that regardless of *McKeown* and the difficulty in displacing a capital value made in a general valuation list if NIVT decided that this was a displacement situation then all the 2005 values of Sixmilewater houses were much too high and there could be no case for any capital value increases.

53. In this regard, the tribunal is satisfied that the assessment of capital value was conducted on the appropriate basis and therefore this does not give grounds for review under any of the grounds in the Valuation Tribunal Rules.

54. In his eighth submission, the appellant states that *McKeown* makes it clear that for the purposes of any revision list the respondent has to have regard to the capital values in the valuation list of comparable properties. He also refers to the *A-Wear* and *Elias* cases as being authority for the difficulty in displacing an original valuation in an inflationary era. He would suggest that they are also authority for the proposition that if there are no proper comparables, then regard may be had to other information that might be helpful. In this regard, house sales and house price rise was intended to be additional data which the NIVT may find helpful in the absence of proper comparable data.

55. In this regard, the tribunal is satisfied that the assessment of capital value was conducted on the appropriate basis and therefore this does not give grounds for review under any of the grounds in the Valuation Tribunal Rules.

56. The appellant suggests, in his final submission, that the comparables used by the NIVT were not proper comparables. In short, he would argue that the capital value of the subject property should have been revised to £108,000.

57. In this regard, the tribunal is satisfied that the assessment of capital value was conducted on the appropriate basis and therefore this does not give grounds for review under any of the grounds in the Valuation Tribunal Rules.

58. The tribunal having considered this matter in detail is satisfied that the appellant has not made out any of the grounds justifying relief pursuant to Rule 21 of the Valuation Tribunal rules and it is the unanimous decision of the tribunal that its original decision remains unaffected and the application for a review is dismissed.

59. By way of note, due to the unavailability of the Valuation Member since the date of hearing of this application for review, this decision and statement of reasons has, with the consent of the appellant and respondent been finalised by the legal chairman and the lay member in this matter.

Signed: Mr Charles O'Neill

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 15 March 2022