

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**RATES (NORTHERN IRELAND) ORDER 1977**

**IN THE MATTER OF AN APPEAL**

**VR/12/2010**

**BETWEEN**

**HANNA BROTHERS – APPELLANTS**

**AND**

**THE COMMISSIONER OF VALUATION – RESPONDENT**

**Re: 233C LOUGHAN ROAD, COLERAINE**

**COSTS**

**Lands Tribunal - Mr M R Curry FRICS MCI.Arb Hon.Dip.Rating**

**Background**

1. The appellants occupied the hereditament and used it for the storage of boats and caravans.
2. In accordance with the Rates (Northern Ireland) Order 1977 the Appellants had appealed, against a Decision of the District Valuer, to the Commissioner of Valuation ('the Commissioner's Appeal stage'). As both these posts are within the Land and Property Services, an Agency within the Department of Finance and Personnel, the Commissioner might, for convenience, be regarded as a domestic tribunal with investigative powers (see Article 52 of the 1977 Order). The appellants were unhappy with his decision and appealed to the Lands Tribunal.
3. In accordance with the Tribunal's usual practice, the matter was listed for mention in October 2010. It was then agreed that time should be allowed for further research and discussions. At the next mention in December 2010 the Tribunal suggested that the appellants seek professional advice. They did so and at a mention on 30<sup>th</sup> March 2011 the parties announced that agreement had been reached on a reduction in Net Annual Value but the appellants were seeking to recover costs as set out in a Schedule of Costs prepared by their valuer, Mr McAlister, a Chartered Surveyor.
4. The parties have been unable to agree whether the Commissioner should meet the costs of the appellants.

## **Procedural Matters**

5. The Tribunal received a schedule entitled a “History of Main Events” prepared by the Respondent.
6. The Tribunal received oral evidence from
  - Mr Thomas Gareth Neill, a Chartered Surveyor in Land & Property Services who had acted on behalf of the Commissioner in discussions with the appellants and their representatives; and
  - Mr Henry Spence, a Chartered Surveyor and District Valuer at the Headquarters of Land & Property Services, who advised the Commissioner on rating matters.
7. The Tribunal received written and oral submissions from Mr J N Richard Rountree, solicitor and Mr Stephen Shaw QC.

## **Positions**

8. Mr Rountree suggested that, because of the circumstances and the substantial reduction in the rateable value, the Commissioner should be liable for the fees sought. Mr Shaw QC suggested that each side should bear its own costs.

## **Discussion**

9. The Tribunal was referred to:
  11. The Lands Tribunal and Compensation Act (Northern Ireland) 1964;
  12. The Lands Tribunal Rules 1976;
  13. Brooks v Northern Ireland Housing Executive [2009] R/27/2007;
  14. Liam & Bernadette Flannigan v Commissioner of Valuation [2010] VT/1/2009;
  15. Newry Building Supplies Ltd v Commissioner of Valuation [1999] VR/8/1997; and
  16. War Memorial Hostel Committee of the Presbyterian Church in Ireland v Commissioner of Valuation [2001] VR/124/1999.
17. Mr Neill gave evidence that at a meeting in Coleraine in March 2011 an agreement between the valuers for a substantial reduction in NAV was reached. This would have been subject to approval by the Commissioner of Valuation. After that figure was agreed, Mr McAlister then raised the issue of costs.
10. Both Mr Shaw QC and Mr Rountree referred to the approach of the Tribunal as discussed in Brooks v NIHE [2009]. At paragraph 4 the Tribunal said:

“The point in time at which costs should be regarded as costs of and incidental to the proceedings (see [Rule 33] of the Lands Tribunal (NI) Rules 1976) is a matter of judgment

in all the relevant circumstances. In many cases it will depend on the question of when the dispute took on the character of contentious litigation or when the parties might no longer reasonably be expected to bear their own costs. In some of the work of the Tribunal the issue has to be addressed in the context of presumptions – for example in applications for modification of restrictive covenants, the applicant will be presumed to be liable for the reasonable costs of initial advice to the person entitled to the benefit; and in compulsory purchase cases, the acquiring authority will be presumed to be liable for the reasonable costs of persons whose land has been acquired.”

11. In the following paragraph, the Tribunal then also noted that the parties and the Tribunal may take deliberate steps intended to affect that judgment and gave one or two examples. It was not suggested that any such steps had been taken in this case.
12. Both Mr Rountree and Mr Shaw QC agreed that the core issue was whether or not the matter had reached the stage of contentious litigation. The questions for the Tribunal would appear to be whether in Rating cases generally or in the particular circumstances of this appeal, there was any reason to treat, as the trigger for treatment as contentious litigation:
  - a. the lodging of the appeal with the Tribunal; or
  - b. employing an expert after lodging the appeal.
13. Mr Rountree referred to Flannigan v Commissioner of Valuation [2010] in which, without the discretion of the Tribunal arising, the Commissioner agreed to pay the costs of the chartered surveyor. But, although it is not apparent from the Decision because it was not relevant, the surveyor had given evidence and been cross-examined. The case clearly had taken on the character of contentious litigation.

#### *The lodging of the appeal*

14. In his experience Mr Neill had never come across an agent seeking costs in such circumstances. Mr Spence had extensive experience of rating cases and explained that once a case had been referred to the Lands Tribunal it became the subject of more intense scrutiny. He also considered that the process of ‘mentions’ before the Tribunal encouraged the parties to get together to see whether an alteration was justified. In his experience the Commissioner had never sought or paid costs when a rating case in the Tribunal was resolved by consent without going to a hearing.
15. Mr Rountree suggested that an award of costs would encourage the Commissioner to exhaust all avenues at the Commissioner’s Appeal stage. Mr Shaw QC suggested the opposite could happen – that appellants would be discouraged from putting their best case to the

Commissioner and hold back material with a few to achieving their costs once the matter was referred to the Lands Tribunal.

16. It is clear from Mr Spence's evidence that the Commissioner reappraises his decision on cases that have been referred to the Tribunal but it does not follow that automatic treatment as contentious litigation on referral would influence the conduct of either party at the Commissioner's Appeal stage. In any event, the Brooks v NIHE [2009] approach would not prevent the Tribunal from taking into account the earlier conduct of the parties and, in particular, any party that does not put its cards face up on the table at the appropriate time runs a considerable risk of an unfavourable award of costs.
17. Mr Rountree suggested that had the Commissioner used the proper comparables at the Commissioner's Appeal stage, the revised rateable value would have been reached without the necessity of an expert having to be employed by the Appellants. He suggested that all the information required to correctly assess the rateable value was available to the Commissioner and had he approached the matter properly, any expenses to the appellants would have been avoided. Mr Spence said that it was an unusual type of property, the assessment was anything but simple and there was a substantial margin of tolerance in the valuation
18. In an ideal world, the investigative role of the Commissioner at Commissioner's Appeal would provide a precise answer but, valuations such as these involve a substantial degree of skill as well as science, and there is room for differences of opinion between even the most expert of valuers. In the experience of the Tribunal the competing views of experts often help reach a solution and there was nothing to prevent the Appellants from employing an expert to address the issues earlier and make representations on their behalf at the Commissioner's Appeal stage.
19. In this case there was no evidence that the Commissioner's approach to the case at the Commissioner's Appeal stage had been other than proportionate.
20. The Tribunal is not persuaded that there was any reason to treat, as the trigger for treatment as contentious litigation, the lodging of this appeal with the Tribunal.

#### *Employing an expert after lodging the appeal*

21. The Tribunal does not accept that the appointment of an expert by an appellant should be regarded as triggering sufficient element of contention. As outlined earlier such appointments often are made well before any referral to the Tribunal is even contemplated. Further, in this

case, the focus of the experts lay in debate and negotiation with each other rather than the preparation of expert evidence to assist the Tribunal.

### **Conclusions**

22. Both Mr Shaw QC and Mr Rountree referred to the approach of the Tribunal as discussed in Brooks v NIHE [2009] and agreed that the core issue was whether or not the matter had reached the stage of contentious litigation.
23. The Tribunal is not persuaded that in Rating cases generally or in the particular circumstances of this appeal, there was any reason to treat, as the trigger for treatment as contentious litigation:
  - a. the lodging of the appeal with the Tribunal; or
  - b. employing an expert after lodging the appeal.
24. Had it come to a different conclusion, the Tribunal would have invited the parties to comment on whether this valuation case fell into the category of “no fault or principle” litigation (see Oxfam v Earl & Ors [1997] BT/3/1995).

### **ORDERS ACCORDINGLY**

27<sup>th</sup> January 2012

**Michael R Curry FRICS MCI.Arb Hon.Dip.Rating  
LANDS TRIBUNAL FOR NORTHERN IRELAND**

### **Appearances**

**Appellants: Mr J N Richard Rountree of John W Pinkerton & Son, solicitors.**

**Respondent: Mr Stephen Shaw QC instructed by Departmental Solicitor’s Office.**