

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
IN THE MATTER OF AN APPEAL
VR/4/1998
BETWEEN
ALFRED BLACK - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Premises: 18 Kingsgate Street, Coleraine

Lands Tribunal for Northern Ireland - Michael R Curry FRICS FSVA IRRV ACI.Arb

Coleraine - 20th April 1999

This was an appeal against a decision of the Commissioner of Valuation, altering the valuation for rating of a shop for purposes of the 4th General Revaluation. It was in a secondary retail location close to the main shopping street in Coleraine and was one of a terrace of former dwelling houses that, long ago, had been converted to retail use. He had reduced the valuation from £9,750 to £9,300, but the Appellant sought a further reduction on grounds that:

“Insufficient allowance has been given to reflect the poor condition of the shop when compared to the assessments of other shops in the immediate area”.

The approaches of the expert valuers, to dealing with its condition, were entirely different and the ultimate issue of a further allowance, if any, turned on subsidiary issues:

- the state of the property, and its individual parts;
- applications of the zoning method;
- the relative helpfulness of comparison with
 - a partly rebuilt and partly refurbished notional equivalent, and
 - other shops in the same terrace; and
- the helpfulness of an approach based on the appellant’s expert’s experience of rent reviews.

The last arose in oral evidence only.

Jim McAleer BL instructed by McClenaghan Crossey & Co appeared for the Appellant. Mr Matthew McAlister, an experienced Chartered Surveyor with long experience in the Valuation & Lands Agency and more recently in private practice, gave expert evidence.

Two builders, Mr Wesley Eakin and Mr Samuel Oliver, gave evidence of the condition of the property and the repair/rebuilding work they had priced.

David McAllister BL, instructed by the Crown Solicitor, appeared for the Commissioner. Mr Richard Nicholas Brown, a Chartered Surveyor with long experience in the Valuation & Lands Agency, gave expert evidence.

In considering any allowance to reflect the apparently poor condition of a hereditament, the starting point usually must be the "General Rule", part of the "Basis of Valuation", set out in Schedule 12 of the Order:-

"1 the net annual value of a hereditament shall be the rent for which, one year with another, the hereditament might, in its actual state, be reasonably expected to let from year to year, the probable average annual cost of repairs necessary to maintain the hereditament in its actual state being paid by the tenant."

So, firstly, the premises are to be valued in their actual state and put to their most valuable use in that state and, secondly, the hypothetical tenancy is on the assumption that the cost of repairs are to be met by a tenant who is obliged to maintain the premises in that actual state, no better nor no worse.

The hereditament comprised a three storey, main building ('the main building') and to the rear of that there was a return ('the return') which was mainly two storey. Both were of brick and slate construction. To the rear again was a single storey lean-to extension ('the lean-to') of single brick and corrugated asbestos construction.

The ground floor was used for a dry cleaning business. The upper floors were generally disused, apart from storage for unclaimed items, and agreed to be of little value. The experts differed as to their value but, as that was not a main issue, the parties agreed to limit the debate and leave it to the judgement of the Tribunal to fix a suitable figure for the upper floors.

The condition of a hereditament may affect the allowance the hypothetical market might make for repairs or it may affect the value by limiting the usefulness of different parts, or both. Mr McAlister's approach was focussed on adjusting the rent to reflect the cost of putting the premises into a state of good condition, whereas Mr Brown's approach was

focussed on reflecting the actual state of the premises directly, by considering the usefulness, and corresponding value of the various parts in their actual condition, and relying on comparisons, that he considered to be in a similar state, to reflect annual repairs.

Mr McAlister had obtained estimates from two local builders, who specialised in shop improvements, for the cost of partly rebuilding and partly refurbishing the ground floor only. Using zoning and the Zone A price adopted for the parade of shops, he estimated what the net annual value would be, if the ground floor of the hereditament were put in good condition. He then rentalised the builders' estimates and deducted that from the 'good condition' rent, arriving, after adjustment, at a Net Annual Value of £7,500.

Mr Brown also used zoning, relied on comparison with two comparables with much in common: numbers 20 and 22. They were neighbours in the same terrace, originally built at the same time and of the same materials. However, he also looked at the disabilities of the building, block by block, and adjusted the related pricing, as and where he considered appropriate having regard to their condition, by modifying the 'halving back' approach to pricing and by reference to the pricing adopted for parts of the comparables. He made no special further addition, over and above what was already reflected in the net annual value of the comparables, for annual repairs to arrive at the Net Annual Value of £9,300.

In summary, Mr McAlister's submitted valuation was:-

Estimated cost for carrying out the work -

Cost of work based on average of estimates	£28,000
Add for contingencies 10-15% say	£ 4,000
Loss of rent for 3 months say	<u>£ 1,500</u>
Total	£33,500

Estimate of NAV assuming the ground floor of the hereditament to be in good condition

Shop	Zone A	19.2m ²	@	£320/m ²	=	£6,144	
	Zone B	25.0m ²	@	£160/m ²	=	£4,000	
	Remainder	9.3m ²	@	£80/m ²	=	£ 744	
	Boiler House	3.4m ²		reflected			
	1st & 2nd Floors - Nominal Value					£ 100	
	Total					£10,988	say £11,000
	Deduct annual equivalent of	£33,500 @ 12%					say £4,000
	Net rent						£7,000

To allow for negotiations in the market

say **£7,500 NAV**

In summary, Mr Brown's valuation was:-

Main building	Shop	Zone A	19.2 sq m @ £320=	£6,144
		Zone B	7.2 sq m @ £160=	£1,152
Return	Store		11.6 sq m @ £80 =	£ 928
Lean To	Store		15.5 sq m @ £48 =	£ 744
Store	Store & Passage		3.4 sq m	
		but effective store area say	2.0 sq m @ £32 =	£ 64
Upper Floors	part valued, part reflected			= £ 324
			Total	£9,356 say £9,300 NAV

Helpfully, Mr McAlister made arrangements for Tribunal to inspect the subject and the comparables relied on by Mr Brown.

The actual state of the buildings

The whole of the ground floor was in actual use as a dry cleaners and both valuers agreed that the use had had an adverse effect on the general condition of the premises. The dry cleaning equipment, its services and the lack of ventilation, routine repairs and decoration gave a very run down appearance.

Generally, the subject and the comparables were all showing their age and would require continual maintenance to prevent deterioration.

Mr McAlister's approach rejected a block by block assessment of condition.

The main building

Although there were disabilities, for example, damp and an uneven and sloping floor, Mr McAlister accepted that the main building of the subject was adequate as a shop and the real difficulties were in the rear of the building. However, he did not consider that the main building, although better than the remainder of the shop, was as good as the adjoining shops.

Having heard from the experts and viewed the subject and the comparables, the Tribunal finds that the floor of the subject was sloped but not significantly so. The area of the floor around the main drycleaning plant was damaged, possibly as a result of replacement equipment having had a different footprint to earlier plant, but not so badly as to justify a

special allowance. Overall, in terms of condition, taking the rough with the smooth, the Tribunal finds there was little to choose between the main blocks of the subject and the comparables.

The return

Mr Brown distinguished the return as being different in construction and character to the main block. The ceiling was lower and steel beams had replaced some load-bearing walls. It was partly single storey and that roof appeared to be defective, allowing damp to penetrate. Mr Brown thought that was probably partly as a result of a defect in a down spout above.

Mr Brown considered that, in its existing poor condition, although beams had replaced walls, and to that extent it was incorporated into the shop, the return had limited value for retail use but had the advantage of being particularly accessible to the shop. It was actually used as a rest area and 'spotting' area.

The Tribunal finds that the return, in its actual state, was limited in usefulness because of its character and condition and continuous maintenance would be required to maintain it in that condition.

The lean-to

The lean-to was a poorly finished construction of single brick and corrugated asbestos. Mr Brown distinguished the lean-to as being different in construction and character to the main block and the return. A change of floor levels between the return and the extension made a distinctive separation: there was a step down of 0.3 metres across the full width. There were no steps but some concrete blocks had been set down to assist access. Although actually used for pressing cleaned clothes, it was obviously not up to retail standard.

Mr Eakin and Mr Oliver thought the condition of the lean-to was amazingly bad: it was fit only for demolition.

The Tribunal finds that the lean-to was a distinct part and of such a character that it should not be treated as suitable for retail use, but it should be treated as suitable for use as storage.

Applications of the zoning method

Mr McAlister valued a hypothetical, modernised version of the premises and, having created retail space throughout the ground floor, used zoning and halving-back for the

entire area. The Tribunal, leaving aside the actual pricing, accepts that such would be a correct approach for those hypothetical modern premises.

Mr McAlister insisted that, if a zoning approach was adopted, it had to be rigorously applied: the hereditament had to be zoned back until either the usual zones were exhausted or there was a structural barrier; equally, halving-back of pricing was an imperative. He criticised Mr Brown's approach, in particular, that of treating the lean-to as stores, and said that was not a recommended approach. Mr McAlister's philosophy was *not* to make specific allowances on particular parts but rather to make an end allowance.

Mr Brown considered that the return, although 'geographically' part of Zone B, was not of appropriate retail quality, in its existing state. He termed it 'store' and applied a compromise pricing (Zone C rather than Zone B). Further, the lean-to was separated by a change of floor levels, not of retail character and ought to be treated as a store: he termed it 'store' and applied a storage pricing.

It may be that the origins of the zoning method lie in the conversions of houses such as these into 'parlour' shops in the earlier part of this century: the front room became the shop, the rear room, storage. The latter was valued at half the rate of the front, and the depth of the rooms (commonly 15 to 20 ft) determined the zones. Over the years, the dividing walls, but not the method disappeared. It became so successful and such a feature of the market that open market values often reflected the method. But, in light of its origins and the lack of a rationale that would make its unmodified use obligatory, the Tribunal agrees with the adage that 'zoning should be subservient to the valuation and not valuation subservient to zoning'. See "Valuation: Principles into Practice" 4th Ed 1992 at page 375 & 376. The zoning method may be corrupted if it is not properly applied but the Tribunal accepts that there will often be good reasons for an approach that departs from the rigorous.

The Tribunal agrees that, viewing the premises in their actual state, there were good reasons to depart from a model zoning approach and, again leaving aside, for the moment, the actual pricing, accepts Mr Brown's approach as a valid application of the method.

The relative helpfulness of comparison with

- ***a partly rebuilt and partly refurbished notional equivalent, and***
- ***other shops in the same terrace.***

This was not a case in which one valuation approach could flavour the other. They were chalk and cheese and a choice had to be made. That choice, put simply, depends on which is more helpful. That often will depend on the relevance and reliability of the factual

evidence and the relevance and reliability of the opinions of the expert witnesses. But, to maintain the tone in the list, there is a statutory obligation:-

“2 (1) regard shall be had to the net annual values in the valuation list of comparable hereditaments which are in the same state and circumstance as the hereditament whose net annual value is being revised.”

As set out earlier, the Tribunal accepts that parts of the subject were substandard and inferior to the corresponding parts of the two comparables put forward by Mr Brown.

Mr McAlister criticised those as comparables but included no expert criticism of the actual valuations in his evidence. At the time of inspection by the Tribunal, No 22 was vacant but the last occupation was as a charity shop. As that use attracted exemption from rates, he suggested its assessment was unreliable and he also suggested the valuation of No 20 was excessive. But, Article 45 of the Order provides:-

“(2) On an appeal under this Article, the valuation shown in the valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.”

Although there may be reasons why, possibly incorrect, assessments have not been challenged, the Tribunal is bound by that presumption and, in the absence of any other persuasive evidence in support, does not find Mr McAlister's criticisms sufficient to persuade it to doubt their correctness or Mr Brown's analysis of them.

Having come to the conclusions he had, relying on the rigorous application of the zoning method, Mr McAlister could not tackle the valuation task using modified zoning and halving-back.

In his opinion the condition of the hereditament was such that it was difficult to form a view on how much the assessment should be adjusted to reflect the condition. Instead, Mr McAlister hypothesised a shop of the same dimensions but in good condition. He requested estimates from builders to achieve “a standard of finish comparable to that of the adjoining properties”. But, that does not appear to be what he got. Mr Oliver proposed to demolish the return and rebuild to a standard to comply with building regulations. On the ground floor of the main building he proposed to remove all wall and ceiling plaster, lift all floors, replace ceilings, replaster walls and lay new floors. He had not looked at No 20 nor No 22. And, Mr Eakin had looked at an adjoining shop being renovated (No 18) and broadly based his approach on the renovation work being done to that. Work to the rear would be difficult because of the asbestos roof, potential problems with party walls and poor access.

The Tribunal concludes that, contrary to Mr McAlister's request, the standard of the completed project would not be "comparable to that of the adjoining properties" but would instead be superior both in terms of quality and annual maintenance requirements and so less relevant. Indeed, it would be difficult to see how a builder could do the work so as to match their condition.

He then applied, to this partly refurbished, partly new shop, the same Zone A price, without adjustment, as had been used for the other, unrefurbished properties (including Nos 20 & 22) in the terrace. One would expect the improvements would increase its net rental value above theirs, but Mr McAlister did not reflect that in his pricing, so the Tribunal has reservations about the reliability of that opinion of rental value.

Taking the average of the two estimates he added £4,000 for contingencies and a figure for 3 months loss of rent of £1,500. He rentalised that at 12%, single rate, at £4,000 a year, deducted that from the 'good condition' rent and, after further allowance, arrived at a net figure for rent of £7,500 per annum. The Tribunal was given no further material by which it might form its own view on the relevance or reliability of that approach.

Mr Brown considered that the subject could readily be valued by direct comparison with the similar properties at Nos 20 and 22. The NAV of No 20 was £10,275, and the NAV of No 22 was £9,725. The comparisons were adjoining properties built at the same time, from the same materials and in his view they were the best available. At No 20 the ceiling at Zone B was lower than Zone A, a more notable difference than at the subject, but, in his analysis, Mr Brown made no special allowance for that. There was evidence of damp at the rear of the first floor but the stores were generally in better condition than at the subject and the roof was newer. At No 22, a return block (brick and slate construction) had been included as part of the shop unit and the upper floors were better than the subject. In both cases, Mr Brown analysed 1st floor stores at £48 per sq m, and 2nd floor at £32 per sq m.

At the subject, he considered that the retail value of the return was significantly reduced as a result of its condition but not extinguished: he reduced the pricing from what would otherwise have been a Zone B rate to a Zone C rate. Because of the poor quality of the lean-to and its physical separation by the step down, he treated the block as having a storage value only and adopted the same pricing (£48) as had been used for the first floor storage at other shops in the parade: better access offset by poorer condition.

Mr McAlister accepted that the main building of the subject accounted for the bulk of the valuation and that it was comparable with Nos 20 and 22, although he did not accept it would have the same value. If the rental value of the main block was anything like Mr

Brown's £7,300 or thereabouts, then, according to Mr McAlister, the expenditure of £33,500 added little or nothing. That conclusion does not inspire confidence in the reliability of the method.

The shop that the builders proposed to provide would be entirely different in character both to what was there and also to the comparables and so would be less relevant.

Mr McAlister's approach relied heavily on the "rentalisation" of an estimated capital sum. That method is appropriate in some cases and, in particular circumstances may be the best or even the only available approach (eg perhaps analysing letting incentives). But, like a "contractor's method" it is a method of last resort. It does not follow that cost equals value. At the very least, the estimates here must be given less weight because they reflected special difficulties arising from access to the rear, party walls and the asbestos roof. In terms of relevance and reliability, that approach, based on hypothetical premises and rentalisation of a very significant estimated capital cost, must give way to what the Tribunal has found to be comparable assessments which require limited adjustment.

Mr Brown's adjustments were not proportionately large; the basis, on which he relied to relate the comparables to the subject, was transparent; and, as set out earlier, the Tribunal accepts Mr Brown's modified application of the zoning method to the return and lean-to. As Mr McAlister did not accept that approach, he did not address the adjustments to pricing, made by Mr Brown, in any detail: there was no contradictory analysis of comparables put forward by Mr McAlister, nothing to support any other figures, for example, for the return and lean-to. In the particular circumstances of the case, the Tribunal accepts the adjustments and finds no basis on which to substitute any other figures.

The Tribunal prefers Mr Brown's approach to that of Mr McAlister as being more helpful: more relevant and more reliable.

The helpfulness of an approach based on the appellant's expert's experience of rent reviews.

Not in his expert evidence but in oral evidence, Mr McAlister said that he was an assessor of rents and, if asked to advise on rent, this is the approach he would use: he would value the hereditament on the assumption of first class order and then used his experience to discount for condition, some 30% of £11,000, to arrive at around £7,500.

Although Counsel for the appellant urged the Tribunal to accept that as the best approach, the Tribunal rejects it for the following reasons:-

- It was not put forward at all in written evidence and must carry little weight as a result;

- The 'good condition' rent assessment is subject to the criticisms set out above;
- It was an unsupported opinion (except that it arrived at the same answer as his other method) and the method, based on general experience, did not provide the Tribunal with criteria it could use to test its validity, either directly or by reference to successful application elsewhere; and
- There was no evidence that Mr McAlister's use of this method, as a 'rent assessor', had met with general acceptance in dealing with disabilities of this proportion, scale and character.

An overview

It was contended that Mr McAlister's approach was less fragmented, more simple and straightforward. The Tribunal does not agree: it had at least as many elements as Mr Brown's; it required the importation of building cost expertise as well as valuation expertise, and expertise in relating the one to the other; and, by focusing on a view of the whole, it did not facilitate any precision in its criticism.

But, it is important that the parties should not allow the detail to obscure the purpose of the exercise and there always is merit in the valuers taking a step back from their figures and taking an overview of their conclusions.

Generally, a properly applied comparable method has proved reliable in the valuation of shops. Here, there were comparable shops and the bulk of the valuation could be closely related to them. Although the poor condition of the rear may make the valuation more difficult, one could make a direct comparison of the core value, and the value of the area at the rear could be arrived at by appropriate adjustments. Mr McAlister accepted that the main building of the subject accounted for the bulk of the valuation and that it was broadly comparable with Nos 20 and 22, that would put its value at about £7,300. On the evidence, it appears to the Tribunal that it is more likely than not that the return and lean-to added more than an insignificant amount to the value.

Mr McAlister's figure of £11,000 was based on using the same Zone A pricing as was adopted for the comparables, among others, and represented an assumption in which the whole of the ground floor was in a state suitable for retailing, and the upper floors of little value. The NAV of No 20 was £10,275: its retail area was smaller but the upper floors were more valuable. The NAV of No 22 was £9,725: its retail area also was smaller and the upper floors were smaller but again more valuable. On a very broad view of these three figures, Mr Brown's valuation at £9,300 does not appear to be in the wrong parish.

Finally, Mr McAlister valued the upper floors at £100, Mr Brown at £324 but he rounded down his total valuation from £9,356 to £9,300. Having accepted Mr Brown's valuation of the ground floor, the Tribunal is content to leave the final total at £9,300.

The burden lay with the Appellant. Having come to the findings it has, on the state of the property, accepted Mr Brown's application of the zoning method and found his comparison with other shops more helpful than an approach based on a notional equivalent, the Tribunal is not persuaded that insufficient allowance has been made. The Appeal must fail.

ORDERS ACCORDINGLY

27th May 1999

**M R CURRY FRICS FSVA IRRV ACI.Arb
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:-

Jim McAleer instructed by McClenaghan Crossey & Co, Solicitors, for the Appellant.

David McAllister instructed by the Crown Solicitor for the Respondent.