

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: 03/11

ADRIAN KELLY - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Tom Matthews FRICS and Mr Peter Somerville

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 a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant indicated in his appeal that he was content for the appeal to be disposed of by written representations and accordingly there were no appearances at the hearing of the matter.

2. The appellant, by Notice of Appeal received by the Office of the Tribunal on 18 April 2011, appealed against the decision of the Commissioner of Valuation ("the Commissioner") on appeal dated 30 March 2011 in respect of the valuation of a hereditament situated at 37C Church Road, Shean, Forkhill BT35 9SX ("the property")

The Law

3. The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). As is now customarily the case, the tribunal does not intend in this decision fully 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 many decisions of this Tribunal. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in the matter.

The Evidence and Facts

4. The tribunal heard no oral evidence, as this was an appeal disposed of as agreed by written representations. The tribunal had before it the appellant's Notice of Appeal to the tribunal (Form 3) and the following:-

- 4.1 The Commissioner's Decision on Appeal dated 30 March 2011.

- 4.2 A document entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Mr Rodney McVitty MRICS and submitted to the tribunal for the purposes of the tribunal hearing.

- 4.3 Correspondence between the tribunal and the parties.

5. The property consists of a dwellinghouse situated at 37C Church Road, Shean, Forkhill BT35 9SX. The appellant is understood to be the ratepayer. The property is a detached two-storey house constructed in or about 2010 with a gross external area ("GEA") of 367m². The property has a detached garage of GEA 86m². The property was further described in the Presentation of Evidence report as having mains water, electricity and a septic tank and full central heating (oil). The property is stated to be located approximately 1.5 miles from Forkhill Village and is accessed by a shared stone laneway which gives access to a number of other residential properties. The

capital value under appeal was originally assessed with reference to 1 January 2005 (that being the antecedent valuation date, or “AVD”) at a figure of £320,000 and that latter figure was then reduced, on appeal to the Commissioner, to £300,000.

6. The Commissioner’s submission to the tribunal is that, in arriving at the capital value assessment, regard was had to the statutory basis of valuation and thus regard was had to the capital values in the valuation list of comparable hereditaments in the same state and circumstances as the subject property. These “comparables” are set out in a schedule to the Commissioner’s Presentation of Evidence, with further particulars given thereafter in respect of these comparables, including photographs of the comparables. There are eight comparables in total including the subject property, all located within a 4 mile radius of the subject property. None of these comparables include sales value evidence, but the Presentation of Evidence expressly states that the other comparables represent unchallenged capital value assessments. Five of the comparables are in relatively close proximity one to the other in terms of location, including the subject property, and another three are located slightly further away. The respondent’s submitted comparables consist of the subject property at 37C Church Road, Forkhill; 53 Church Road, Forkhill; 37A Church Road, Forkhill; 42 Forkhill Road, Forkhill; 102 Carrive Road, Forkhill; 5 Cloghinny Road, Forkhill; 32B Captains Road Forkhill; and 37B Church Road, Forkhill. Copies of the Commissioner’s Presentation of Evidence and of the other documentation have been provided to the appellant but the appellant has not responded any further thereto by making any additional submissions to the tribunal to add to the points made by him and contained in his Notice of Appeal to the tribunal.

THE SUBMISSIONS

7. The appellant has included the following points in his appeal submissions:-
 - The best comparables were those who were closest neighbors, i.e. sharing the same stoned lane.
 - The value of his house was disproportionately higher, although the appellant did accept that it was bigger.

- The appellant had not been shown evidence (by the respondent) to suggest the appellant's house was worth £300,000 in 2005 terms.
- The appellant contended that evidence from a mortgage company survey estimated the value at £250,000 in the current climate.

8. For the respondent, it has been submitted that the valuation was conducted upon the statutory basis and that the valuation reduction to £300,000 (upon appeal to the Commissioner) placed the property "in tone" (that is to say in conformance with what is known in valuation terms as the "tone of the list") with surrounding comparable properties. Whilst the appellant had not expressly named comparables which he felt were most relevant, it was assumed that the appellant was referring to 37 and 37B Church Road, Forkhill. These properties were considerably smaller, with 37 Church Road, Forkhill, being a chalet bungalow of 215 m² and a capital value of £220,000. It was contended that that property was not a valid comparator. 37B Church Road, Forkhill, consisted of one of the eight named comparators. It was a two-storey house of 250 m² with a capital value of £225,000. It was contended that at 117m² smaller than the subject property and with no garage, the £75,000 difference in capital valuation in comparison to the subject property was reasonable. 37A Church Road, Forkhill, constituted another of the eight named comparators. It was also situated along the same shared stone laneway but was located further down the laneway than the subject property. This was a two-storey house of 354 m² with a capital value of £290,000. In regard to the appellant's points that he had not been shown any evidence to prove his house was worth £300,000 in 2005, and that according to a mortgage company survey the current value of the property was £250,000, the contention made on behalf of the respondent was that "tone" was well-established and that all newly reconstructed properties were valued by comparison with assessments of similar properties already in the list, as directed by the legislation. The valuation provided by the mortgage company was contended not to be an open market value assessment, but rather was a risk management tool to assist mortgagees and was also misleading, being too far removed from the antecedent valuation date of 1 January 2005 (AVD).

THE TRIBUNAL'S DECISION

9. Article 54 of the 1977 Order enables a person to appeal to this tribunal against the decision of the Commissioner on appeal regarding capital value. In this case the capital value has been assessed at AVD at a figure of £300,000. The appellant contends in his appeal to the tribunal that that figure ought properly to be £250,000 - £270,000. On behalf of the Commissioner it has been contended that that figure of £300,000 is fair and reasonable in comparison to other properties; the statutory basis for valuation has been referred to and especially reference has been made to Schedule 12 to the 1977 Order in arriving at that assessment.
10. The tribunal notes the statutory presumption contained within the 1977 Order, Article 54(3). Thereby, any valuation shown in a valuation list with respect to a hereditament (a property) shall be deemed to be correct until the contrary is shown. In order to succeed in an appeal, the appellant must either successfully challenge and displace that statutory presumption of correctness or perhaps the Commissioner's decision on appeal, objectively viewed, must be seen by this tribunal to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the capital value to an appropriate figure.
11. The tribunal saw nothing in the general approach taken to suggest that the matter had been approached for assessment in anything other than the prescribed manner as provided for in Schedule 12 of the 1977 Order.
12. The Commissioner's statement of case as set out in the Presentation of Evidence and the schedule of comparables was challenged by the appellant on the basis mentioned above.
13. The tribunal examined the essential issue of whether or not the appellant had put forward sufficient challenge to the Commissioner's schedule of comparables and sufficient evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation.
14. The arguments made by the appellant have been mentioned above and the response to these arguments on the part of the Commissioner has been noted. In this case, as in all such cases, the statutory provisions state that the capital value of

the property shall be the amount which (on the statutory assumptions) the property might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date. Further, in estimating the capital value regard shall be had to the capital values of comparable properties in the same state and circumstances as the property. The tribunal thus gave full consideration to all of the evidence and argument including the analysis of the appropriateness of selection and the weight to be attached to the properties put forward as comparables both by the respondent and also by the appellant (as identified by assumption as these were not expressly named), insofar as these related to the statutory basis of valuation. There is regrettably no sales evidence and so the case is reliant upon unchallenged capital values as evidence of “tone of the list”.

15. The appellant's first contention is that the best comparables were those who were closest neighbours, i.e. sharing the same stoned lane. The tribunal has noted the response to that contention on the part of the Commissioner, with an analysis of the basis of capital valuation of the (presumed) comparators referred to by the appellant. In the tribunal's view, the only one of these which is a relatively useful comparator is 37A Church Road, Forkhill, which is one of the eight named comparators in the Presentation of Evidence. That property is also situated along the same shared stone laneway but is located further down the laneway than the subject property. This consists of a two-storey house of 354 m² with a capital value of £290,000. The tribunal notes that it is slightly smaller than the subject property and does not have the benefit of a garage. However there is useful information to be gained from that property for valuation purposes in that there is similarity of location, circumstances and characteristics to the subject property, save for the absence of a garage. Extracting the appropriate evidence and information from both this latter property and also the other relatively useful comparables, for example 42 Forkhill Road, Forkhill (a two storey post-1990 dwellinghouse of GEA 355m² with no garage and a capital value of £325,000); 102 Carrive Road, Forkhill (a two storey post-1990 dwellinghouse of GEA 361m² with a garage of GEA 94m² and a capital value of £320,000); and 5 Cloghinny Road, Forkhill (a two storey post-1990 dwellinghouse of GEA 369m² with no garage and a capital value of £315,000); the tribunal accepts the respondent's contention that this information and evidence is indicative of the correctness of the capital value ascribed to the subject property by the

Commissioner on appeal. The properties cited by the appellant in argument (assumed and as mentioned above) are not as useful in comparative terms and thus lesser weight must be attached to these evidentially. The tribunal also accepts the respondent's submission regarding the inappropriateness of deriving any conclusions as to capital value of the subject property from the mortgage company valuation, for the reasons stated in that submission.

16. Taking the evidence as presented to the tribunal and noting the arguments and submissions, the tribunal's conclusion is that the appellant has not placed before the tribunal sufficient evidence, information and argument to enable the statutory presumption of correctness in respect of the capital value assessment to be displaced. The tribunal concludes that the Commissioner's assessment of capital value in respect of the subject property at a figure of £300,000 is not self-evidently or manifestly incorrect. Thus the appeal cannot succeed. The Commissioner's Decision on Appeal is upheld and accordingly the appeal is dismissed.

**Mr James V Leonard, President
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: *22 September 2011*