

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

**CASE REFERENCE NUMBER: 22/09**

**ALAN AND BERYL PEACOCK – APPELLANT**

**AND**

**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND –  
RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr Stephen Wright**

**Members: Ms Siobhan Corr MRICS and Mr Alan Martin**

**Belfast, 28 September 2009**

**DECISION**

1. The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 2 April 2009 is upheld and the appellant's appeal is dismissed.

**REASONS**

**2. Introduction**

3. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, Mr Peacock, appeared and represented himself and Mrs Beryl Peacock (who did not appear) and Mr Brian James represented the Commissioners as respondent.
4. The appellant's Notice of Appeal against the decision of the Commissioner of Valuation for Northern Ireland ("the Commissioner") dated 02 April 2009 in respect of the valuation of a property situated at 15 Seahaven Avenue, Groomsport BT19 5PQ (hereinafter referred to as the subject property) was received by the Secretary to the Northern Ireland Valuation Tribunal on 15 April 2009. The Commissioner has assessed the domestic capital value of the said property at £85,000. The appellant disputes this and in his notice of appeal against valuation for rating purposes states the actual valuation should be £60,000.

**THE LAW**

5. The statutory provisions are to be found in the 1977 Order, as amended

by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). Article 8 of the 2006 Order amended Article 39 of the 1977 Order (the basis of valuation) as follows:-

“8.- (1) In Article 39 of the principal Order (basis of valuation), for paragraph (1) there shall be substituted the following paragraphs —

“(1) - .

(1A) - For the purposes of this Order the following hereditaments shall be valued upon an estimate of their capital value —

- (a) any dwelling-house;
- (b) any private garage;
- (c) any private storage premises.

(1B) -. For the purposes of this Order, every hereditament which, though not a dwelling - house, is used partly for the purposes of a private dwelling shall be valued upon an estimate both of its net annual value and of its capital value.

(1C) -. For the purposes of paragraphs (1A) and (1B) any hereditament –

- (a) which is not in use; and
- (b) which the Commissioner or District Valuer considers will, when next in use fall within any in any sub-paragraph of paragraph (1A) or within paragraph (1B).

shall be deemed to be in use and to fall within that sub-paragraph and paragraph (1A) or, as the case may be, within paragraph (1B)”.

(2) In Part One of Schedule 12 to the principal Order (basis of valuation), after paragraph 6 there shall be inserted the following paragraphs —

" *Capital value – general rule*

7.-(1) Subject to the provisions of this Schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in paragraphs 9 to 15, the hereditament 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.

(2) In estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and

circumstances as the hereditament whose capital value is being revised.

(3) The assumptions mentioned in paragraphs 9 to 15 shall apply for the purposes of determining whether one hereditament is a comparable hereditament in the same state and circumstances as another with the omission of sub-paragraphs (2) and (3) of paragraph 12.

(4) In sub-paragraph (1) "relevant capital valuation date" means 1<sup>st</sup> January 2005 -

*Capital value – the assumptions*

8. In this paragraph and paragraphs 9 to 15—

"development" has the meaning given by Article 2(2) of the planning Order;

"flat", in relation to a building, means a dwelling which is a separate set of premises, whether or not on the same floor, divided horizontally from some other part of the building;

"incumbrance" means any incumbrance, whether capable of being removed by the seller or not, except service charges;

"permitted development" means development for which planning permission is not required or for which no application for planning permission is required; "Planning Order" means the Planning (Northern Ireland) Order 1991 (NI 11);

"planning permission" has the meaning given by Article 2(2) of the Planning Order

"rent charge" has the meaning given by section 27(1) of the Ground Rents Act (Northern Ireland) 2001 (c. 5).

9. The sale is with vacant possession.

10. The estate sold is the fee simple absolute or, in the case of a flat, a lease for 99 years at a nominal rent.

11. The hereditament is sold free from any rent charge or other incumbrance.

12.-(1) The hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality.

(2) The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

(3) In sub-paragraph (2) "relevant date" means 1<sup>st</sup> April 2007 or such date as the Department may substitute by Order made subject to negative resolution for the purposes of a new capital value list.

13. The hereditament has no development value other than value

attributable to permitted development.

14.-(1) A hereditament falling (or deemed to fall) within any sub-paragraph of Article 39(1A) will always fall within that sub-paragraph

(2) A hereditament falling (or deemed to fall) within paragraph (1B) of Article 39 will always fall within that paragraph.

15.-(1) There has been no relevant contravention of —

(a) any statutory provision; or

(b) any requirement or obligation, whether arising under a statutory provision, an agreement or otherwise.

(2) In sub-paragraph (1) "relevant contravention" means a contravention which would affect the capital value of the hereditament."

The 2006 Order also amended the 1977 Order (regarding appeals) as follows:-

**“Appeals from the Commissioner .....**

33.

For Article 54 of the principal Order.... there shall be substituted the following Articles —

**" Appeal from decision of Commissioner**

54.(1) Any person, other than the Department, who is aggrieved by —

(a) the decision of the Commissioner under Article 49A or on an appeal under Article 51; or

(b) an alteration made by the Commissioner in a valuation list in consequence of such a decision,

may appeal to the appropriate Tribunal.

(2) On an appeal under this Article, the Tribunal may —

(a) make any decision that the Commissioner might have made; and

(b) if any alteration in a valuation list is necessary to give effect to the decision, direct that the list be altered accordingly

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

(4) In this Order "the appropriate Tribunal" means—

in relation to such appeals as may be prescribed, the Valuation Tribunal”

## **THE EVIDENCE**

6. The Appellant and Respondent gave oral evidence to the Tribunal. The Tribunal considered the following documents.

- (i) Notice of Appeal received by the Tribunals Unit on the 15<sup>th</sup> April 2009.
- (ii) The Commissioner’s Decision dated 02 April 2009 declining to amend the subject property valuation of £85,000.
- (iii) Original Commissioner’s decision on appeal dated the 16<sup>th</sup> April 2008 amending the initial valuation of the property from £100,000 to £85,000.
- (iv) Correspondence between the Tribunal dated 11<sup>th</sup> May 2009 for the appellants.
- (v) Submissions made by the appellant dated 11<sup>th</sup> May 2009 entitled “papers prepared under N.I.V.T. Ref: 949015 and for the attention of the Commissioner of Valuations for N.I.” Attached to the said submission are:-
- (vi) Windsor Caravan Park licence.
- (vii) Correspondence to Gavin Logan Chairman/Managing Director of 57 Development Ltd dated 11<sup>th</sup> July 2008 and 11<sup>th</sup> August 2008.
- (viii) A document entitled Presentation of Evidence prepared on behalf of the Commissioner by Mr James MRICS dated 20<sup>th</sup> August 2009. Attached to this said document was:-
- (ix) Location map of the subject property and comparisons.
- (x) Schedule of comparisons for NIVT.
- (xi) A licence between the owner and the occupier of the said property.
- (xii) On foot of an interim order issued by the tribunal requiring production of documentation by the appellant the following documentation was received.
- (xiii) Minutes of a meeting dated 21<sup>st</sup> May 2008.
- (xiv) Seahaven Park Home rules of occupancy.
- (xv) Full purchase agreement and agreement for licence dated 17<sup>th</sup> July 2007.

(xvi) Certified extract from the valuation list dated 29<sup>th</sup> September 2009 in respect of 15 Seahaven Avenue, Groomsport BT19 5PQ.

(xvii) On foot of a request dated the 26<sup>th</sup> October 2009 to the respondent, the following documentation was received on the 17<sup>th</sup> December 2009 -

(xviii) Certified extract from The Valuation List showing an entry in the Valuation List as at the 16<sup>th</sup> April 2009.

(xix) Certified extract from The Valuation List showing an entry in the Valuation List as at the 6<sup>th</sup> December 2007.

(xx) A submission dated the 30 October 2009 by the respondent as to the legal basis for treating the subject property as a hereditament.

(xxi) The applicant's Response dated 21 December 2009.

### **THE APPELLANT'S EVIDENCE AND SUBMISSIONS**

7. The appellant made the following submission that the capital valuation placed on the property situated at 15 Seahaven Avenue, Groomsport, should not be £85,000 but £60,000. The appellant's grounds of appeal are detailed in a submission of 11<sup>th</sup> May 2009 and in the oral evidence provided at hearing.
8. The appellant submitted that the Property description given by the Commissioner of Valuation as a "house outbuilding garden" was incorrect.
9. The appellant submitted that the property situated at 15 Seahaven Avenue, Groomsport, is a caravan and not a house. The appellant referred to Windsor Caravan Park Licence dated 2<sup>nd</sup> February 2006 which states, "North Down Borough Council hereby licences as a Caravan Site subject to the following conditions, the premises containing 27.6 acres known as Windsor Caravan Park ....".
10. The appellant further submitted that this is a mobile caravan that can be removed in about two hours on to the "public road". He further stated that the caravan is constructed on two thin steel chassis "members"; the remainder of the material being wood mostly cheap "board" or "ply". The appellant further advised that the caravan was made up in two sections, driven on two "swan necked" trailers to the site and joined up with basic wallpaper, and carpet covering added on site. He submitted that the retail cost as at May 2009 was £41,000.
11. The appellant took issue with the respondent's written description of the property, namely that "the property was a traditional park home with a construction comprising; concrete and brick based, steel and timber structure ...". The appellant asserted that there is no such thing as a "park home" and further that the "rustic brick skirting" simply hides the

real truth of what is under the caravan. The “skirting” together with front and back access steps he asserts is not under his ownership but remains the property of Seahaven/Lifestyle/Windsor/57 Developments Ltd or other registered companies within the “group”. The appellant is certain that the caravan is not connected at any point to these bricks or tiles.

- 12.** The appellant referred to the judgment of Mr Justice Weatherup in the High Court of Justice in Northern Ireland Chancery Division of *57 Developments Ltd -v- the Department of the Environment for Northern Ireland* [2004] NI Ch 3. The claim and counter claim by the plaintiff and defendant centred around the provisions of the Caravans Act (Northern Ireland) 1963 and the requirement for planning permission under the Planning (Northern Ireland) Order 1981. The originating summons by the plaintiff related to property situated at Ballyhalbert Caravan Park, Ballyhallbert. The plaintiff made the application to secure a declaration that (a) the provisions of the Caravans Act (Northern Ireland) 1963 permit twin unit caravans to be purchased, erected and maintained in Northern Ireland; and (b) “the twin units caravans erected and stationed by the plaintiff at Ballyhalbert Caravan Park are Caravans within the meaning of Section 25(1) of the Caravan Act (Northern Ireland) 1963. Mr Justice Weatherup found inter alia on the facts of that case that a “caravan“ for the purposes of the statutory definition is a single structure that is designed or adapted for human habitation and which is capable of being moved lawfully on the public highway by towing or transportation as a single structure. Some twin unit caravans/park homes are capable of such mobility, as they are capable of satisfying the relevant regulations, being less than 6.1 meters in width. On the facts of this case Mr Justice Weatherup found that in respect of the caravan units at the said site they came within the definition of Caravan for the purposes of planning permission.
- 13.** The appellant also took issue with a description of his outbuilding described as a “garage”. The appellant stated this is a “sectional building easily removable or suitable for re-siting”. The appellant also questioned the use of the word “garden”. He stated he did not own any garden, as the grass that surrounds the caravan is land owned by the company and rented to him at approximately £1,680.00 per annum. Failure to pay this annual amount on a monthly basis would lead to removal from the “Park”. The appellant states that he should not pay rates on things that are not in his own ownership and upon which he never received any commercial advantage. The appellant further stated that the wooden structure known as a caravan he had valued as new at £41,000 and this decreases in value with age.
- 14.** The second limb of the appellant’s argument is one relating to security of tenure. The appellant stated that the Caravans Act (Northern Ireland) 1963 cannot be used to provide security of tenure for residents of mobile homes/caravans. Neither can it be used for agreements between the owners of caravans/park homes and site owners. The appellant referred

to a new Bill currently with a team of Northern Ireland Assembly “draftsmen” which he asserts will provide protection for caravan owners against park owners. For the purposes of this hearing, this evidence was not considered relevant to the fact in issue, namely the capital value of the property, as this clearly was not (and is not) operable at the time of the assessment or this Judgement.

- 15.** The appellant further referred to the licence which sets out “the terms in which you are entitled to keep your mobile home on site”. In that licence, the occupier inter-alia at paragraph 3(d) undertakes “Not to use the mobile home otherwise than as his private residence for himself and the members of his permanent household and bona fide upon such deposit account shall be shared equally”. Paragraph 5 deals with the duration of the agreement. Paragraph 5(b) states that “The Occupier shall be entitled to terminate the Agreement by Notice in writing given to the Owner not less than four weeks before the date on which it is to take effect” and (c) “The Owner shall be entitled to terminate the Agreement forthwith if on application of the Owner the Arbitrator:-

(i) Is satisfied that the Occupier has breached a term of the Agreement and after service of a Notice to remedy the breach has not complied with the Notice within reasonable time.

(ii) Considers it reasonable for the agreement to be “terminated.....”

- 16.** The third limb of the appellant’s argument is that he does not benefit from any national housing buildings certification, normally 10 years. He asserts that he has a guarantee from the manufacturer who normally “ducks” the issues. The appellant asserts that this should affect the capital valuation of the said property.

- 17.** The final limb of the appellant’s argument is to challenge the presentation of evidence of the commissioner. The appellant did this by reference to the map pointing out the location of his property. In particular he refers to the following factors:-

(i) The Commissioner described the property as having a tiled roof. The appellant asserts that it is made up of sheets put together of approximately 4’ 6”.

(ii) The “plot” is owned by Lifestyle Homes Island trading as 57 Developments Limited.

(iii) There was no furniture in the house as the appellant brought his own furniture into the subject property.

(iv) The garage is of poor quality.

(v) The street lighting is not the normal street lighting.

18. By reference to the map the appellant states that the outlook from the caravan is onto the sea of smelling mud with rubbish everywhere. The appellant advises that, every two weeks or so, Lifestyle Homes Limited consistently dumps its rubbish within the appellant's view, pours petrol over the mound and sets it on fire.
19. The appellant also wishes to distinguish between Phase one of the caravan park (the top end of the map) and Phase two which relates to properties at the bottom end of the map. The appellant asserts that it is necessary for him to drive past static caravans that are occupied by various social groups of people, many of whom, in the appellant's opinion, do not conform to park rules. Furthermore, Phase one does not have the outlook as described by the respondent and that, having driven around the said properties, the appellant could not understand how they could all be valued in the region of £85,000.

### **SUBMISSIONS BY THE RESPONDENT**

20. Mr James for the Commissioner referred to his statement of case to the Northern Ireland Valuation Tribunal. In that presentation he states that 15 Seahaven Avenue, Groomsport, has a property ID of 9499015; a gross estimated area (GEA of 85m<sup>2</sup>), a single garage of 15m<sup>2</sup> full gas central heating and accommodation comprising lounge/dining/kitchen, 2 bathrooms (en suite), a bath and WC.
21. The respondent states that the subject property is a park home on Seapark Homes Estate, Groomsport. The site is located on the coast approximately one mile east of Groomsport Village. At present, the site has a mixture of static caravans/park homes. In Mr James' view it appears that it is the intention of the site owner to replace all static caravans with park homes over a period of time.
22. Mr James describes the subject property as a traditional park home construction comprising; concrete and brick base, steel and timber structure with plywood and stucco exterior cladding, PVC double glazed window frames and tiled roof. He further states that the structure is owned by the appellant and the plot is owned by Lifestyle Homes Ireland. The current licence fee (as per the appellant) is approximately £1,700 per annum.
23. The subject is located at the northern end of the site among other similar park homes.
24. The subject property was purchased, as were all others on the site, as a full turnkey package to include kitchen with integrated appliances, furniture, carpets and curtains. In response to the appellant's grounds of appeal the respondent states as follows:

## **Statutory Basis of Valuation**

- 25.** The valuation has been assessed in accordance with the legislation contained in the Rates (Northern Ireland) Order 1977. Schedule 12 paragraph 7 defines capital value as “the amount which on the assumptions mentioned in paragraphs 9-15(referred to at paragraph 5 above in this Judgement) the hereditament might reasonably be expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date”. The relevant capital valuation date is 1<sup>st</sup> January 2005 (the antecedent valuation date). Schedule 12 also requires that in cases of revision of the valuation list “regard shall be had to the capital values in the valuation list of comparable hereditament in the same state and circumstances”.
- 26.** At the date of the application on 27<sup>th</sup> August 2008, the respondent states that the tone of the valuation list for Seahaven was well established. The subject property was valued directly in line with other park homes on this site “in the same state and circumstance”. Mr James refers to comparisons showing the general tone (as detailed in the attached schedule to his submission) of other properties which he referred to. Sale prices of park homes from the operator, as close to the antecedent date as possible, were also included and these were found to be in the region of £85,000.
- 27.** In response to the appellant’s specific points, the respondent states the following.
- 28.** The Commissioner’s description of the property as “house outbuilding garden” is in line with all other park homes on the site and does not affect the assessed capital value.
- 29.** With regard to the appellant’s argument of lack of security of tenure and the proposed caravan legislation, the respondent states that the statutory basis of valuation assumes that the subject property is sold in fee simple absolute.
- 30.** With regard to the NHBC Protection, road cleaning and street lighting, the respondent states that road cleaning and street lighting are covered by the operator’s annual pitch fee and that the subject’s structure is covered by the manufacturer’s guarantee. The respondent reiterates that the subject property is valued in line with other park homes in the same state and circumstances.
- 31.** In relation to the issues concerning the appellant’s site, the respondent makes the following comments:-

  - (i) In relation to the poor quality garage, he states that at the date of the inspection, the appellant had informed him that the garage had been replaced twice. Although dry at the date of the inspection, the garage appeared to be sound in condition. It is, however, a sectional building in

an exposed coastal location and it may well allow the ingress of some water especially around the door in strong wind and rain. Its condition in the respondent's view is not considered poor enough to affect the capital value.

(ii) In relation to the access past poor quality static caravans the respondent states that due to the one-way traffic system in operation within the site, the appellant gains access to an avenue containing a mixture of park homes and older static caravans. In his opinion this has no affect on the capital value. In relation to the fact that the pitch has a poor outlook, the respondent commented that the subject property is located at the edge of the northern end of the site and adjoins an area of rough scrub land which lies between Seahaven and the rocky shore line. In his evidence, Mr James stated that, on his visit to the site, he did not see any rubbish being burned. Although the view was not particularly attractive, in his opinion it had a negligible effect on the subject's capital value.

(iii) Mr James further stated that, in relation to the replacement value that had been asserted by the appellant as being £48,000, the valuation for rating purposes should be assessed in accordance with the statutory assumptions as stated in Schedule 12 of The Rates (Northern Ireland) 1977 and not at replacement cost.

- 32.** On behalf of the Commissioner, Mr James stated that there had been, in fact, two appeals. The initial capital valuation had been assessed at £100,000. This figure was subsequently reduced to £85,000. Mr James commented that no doubt some of the points made by the appellant were taken into account when the initial assessment of capital value was revised downwards. Further, Mr James stated that the valuation of the said property came within the tone of the valuation list. Mr James explained that once a valuation list has been in force, the value levels established at the antecedent date for particular types of property or for a particular occasion set what is described as the tone of the valuation list. In estimating the capital value of any hereditament for the purposes of any revision of the valuation list, regard shall be had to the capital values in that list of comparable hereditaments in the same state and circumstances of the hereditament having its capital value revised (Rates Amendment Order 2006). Mr James commented that the tone is the number of hereditaments of similar state and size from which values had been made thus creating a tone or similarity between the said properties.

## **THE TRIBUNAL'S DECISION**

- 33.** Article 54 of the 1977 Order enables a person to appeal to the Tribunal against the decision of the Commissioner on appeal as to capital value. In this case, the capital value has been assessed at a figure of £85,000. On behalf of the Commissioner, it has been contended that the figure is fair and reasonable in comparison to other properties and 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 the assessment.

34. The Tribunal must begin its task by taking account in an important statutory presumption contained within the 1977 Order. Article 54(3) of the 1977 Order provides, “*On an appeal under this Article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown*”. It is thus apparent that the statutory assumption as to the correctness of the valuation list can be rebutted. It is therefore up to the appellant in any case to challenge and to displace the presumption, or perhaps for the Commissioner’s decision on appeal to be seen to be so manifestly incorrect that the Tribunal must take steps to rectify the situation.

### **NATURE OF THE SUBJECT PROPERTY**

35. The Statutory basis for treating the subject property, 15 Seahaven Avenue, Groomspoint as a hereditament and including it within the valuation list is found in the Rates (Northern Ireland) Order 1977. Within the Order is as follows;
36. *Article 2 of The Rates (Northern Ireland) Order 1977 defines the word “hereditament” as meaning property which is or may become liable to a rate, being a unit of such property which or would for to be shown as a separate item in the valuation list. The terms ‘rate’ and ‘valuation list’ are also defined within the same paragraph.*
37. Para 37 requires that, subject to some limitations, properties contained within Schedule 10 are to be treated as hereditaments and those within Schedule 11 are not to be treated as hereditaments.
38. Para 44 requires that where a hereditament is a dwelling-house it shall be shown as such in the valuation list. Schedule 5 defines the meaning of “dwelling house” within the Order.
39. Schedule 10 lists hereditaments.
40. Schedule 11 lists properties not to be treated as hereditaments.
41. The concept of the rateable hereditament has been examined and developed extensively in case law and is intrinsically linked with rateable occupation. Leading case law dealing with the hereditament and rateable occupation includes, *Switzer v Cov* 1902 2IR 275; *Belfast Collar Co v COV* 1959 NILR 198, *Leckpatrick Dairies v COV* 1990 VR22&23/1990; *John Laing & Son v Kingswood* 1949 1 ALL ER 244, *Westminster Council v Southern Railway Co* 1936 AC 511; *London County Council v Wilkins* 1956 1 RRC 88 HL and *Field Place Caravan Park v Harding* 1960 3 All ER 247.

42. In the case of *Field Place Caravan Park Limited -v- Harding* (VO) (1966) a caravan site contained a number of residential caravans which had been in position for more than a year. Each had a small garden and was connected in a temporary way to electricity and drainage but still had wheels on and could be moved quickly, in the event of fire. It was held by the Court of Appeal that each occupier of a caravan on the site was in rateable occupation of his or her own caravan. Lord Denning stated "...you have to look at the enjoyment by the occupier of the premises for which he occupies, and the extent to which the site operate can interfere with that enjoyment". Bond and Brown in *Rating Valuation Principles and Practice (2006 edition)* state "Where individuals separately occupy caravan pitches on a long-term basis it is likely each will form a separate hereditament as in *Field Place Caravan Park -v- Harding* (VO) (1966)". In the case the Tribunal finds that the appellants were in such occupation.
43. It is now well established, that certain objects can, if joined with land and with a sufficient degree of permanence become rateable with it, e.g. caravans, builders huts, floating clubhouses, floating restaurants. In *Rudd (VO) -v- Cinderella Rockerfellas Limited* (2002) the Tribunal in England found that a former ferry which had been converted into night club and moored on the River Tyne was rateable and should be assessed as such.
44. The Tribunal finds it as a matter of law and fact that the property situate at 15 Seahaven Avenue, Groomsport, is a hereditament.
45. The Tribunal refers in particular to the certified extract from the Land and Property Services valuation list dated 29 September 2009 showing that the occupiers are Mr and Mrs Peacock of 15 Seahaven Avenue, Groomsport BT19 5PQ, and that the entry in the Valuation List for this particular property in the Council District of North Down is £85,000. The Tribunal also refers to the certified extract from the valuation list dated 16<sup>th</sup> day of April 2008 showing a valuation of £85,000. A previous certified extract from the valuation list dated the 6<sup>th</sup> day of December 2007 shows a valuation of £100,000 (from the Land and Property Services).
46. In this case the Tribunal finds as a matter of fact that there is permanence in the residency by the appellant at the said property. In particular, the Tribunal refers to the Windsor Caravan Park licence which inter alia states "the caravan site should be divided into two distinct areas – "Windsor Holiday Park" relating to that which is considered to be for holiday use; and "Seahaven" relating to that which is for residential use and which will remain open for twelve months per year". The appellant's property clearly falls within the area on the caravan park described as "Seahaven". The licence agreement at paragraph 3(d) refers to the undertaking of the Occupier (to the Owner) "Not to use the mobile home otherwise than as his private residence for himself and members of his permanent household..."

47. The appellants have resided permanently at 15 Seahaven Avenue, Groomsport, and paid a sum of £194,950 for the property.
48. The appellant has referred the tribunal to the case of *57 Developments Limited and the Department of Environment for Northern Ireland*. [2004] NI Ch 3. The Tribunal notes that this is a specific planning permission matter where the case revolved around the issue as to whether twin unit caravans erected and stationed by the plaintiff at Ballyhalbert Caravan Park were caravans within the meaning of 25(1) of the Caravan Act (Northern Ireland) 1963, or whether (a) the site works around the twin units (described by the defendant as “Park Homes”) and (b) whether the general site works at Ballyhalbert Caravan Park, constituted development and required planning permission under the Planning (Northern Ireland) Order 1991. On the facts of this case the Mr Justice Weatherup found that in respect of the caravan units at the said site that they came within the definition of Caravan for the purposes of planning permission. Whilst the subject property may appear to come within the legal definition of Caravan for planning permission purposes, this is largely irrelevant in this particular case which is quite clearly rating related. This case falls to be considered as to whether the property situate at 15 Seahaven Avenue, Groomsport, is correctly defined as a hereditament which means property which is or may become liable to a rate, being a unit of such property which would fall, to be shown on a separate item on the valuation list. The Tribunal notes that Article 39 of the 1977 Order as amended by Article 8(1) (1B) states that “For the purposes of this Order, every hereditament which, though not a dwelling house, is used partly for the purposes of a private dwelling shall be valued upon an estimate both of its net annual value and of its capital value.”
49. The Tribunal notes that the appellant states that the valuation of the subject property should be £65,000 and not £80,000.
50. The Tribunal, therefore, finds as a fact that the property situate at 15 Seahaven Avenue, Groomsport, is a hereditament. The Tribunal concurs with the views of the Land and Property Service that the subject property “is a single unit property, defined with a degree of permanence, used for the purposes of a private dwelling, in the occupation of Mr and Mrs Peacock and located within the boundary of North Down District Council.” The subject property is therefore correctly entered as being a single unit of such property which or would fall, to be shown as a separate item on the valuation list. The respondent has clearly established that it the subject property is a hereditament.

### **SECURITY OF TENURE**

51. The appellant has raised the issue that because there is no security of tenure that the assumptions as set out in Article 39 of the Rates (Northern Ireland) Order 1977, as amended by Article 8 of the Rates

(Amendment) (Northern Ireland) Order 2006. and Part 1 of Schedule 12 to the 1977 Order (set out above at paragraph 5 pages 4-5 of the judgement), should not be applied to the property at 15 Seahaven Avenue, Groomsport, as according to the licence agreement there is no security of tenure and that the property is not held in fee simple absolute or, in the case of a flat, a lease for 99 years at a nominal rent. In regard to this matter, the Tribunal refers to the persuasive decisions in the jurisdiction of England and Scotland with regard to the ability or otherwise of applicants to rebut the presumptions contained in analogous legislation in relation to council tax. The authorities are clear that whilst the statutory presumption as to the correctness of the valuation list can be challenged (as it is in the jurisdiction of Northern Ireland see paragraph 33 of this judgment) the Capital Valuation Assumptions are not capable of being rebutted.

52. In the case of *R-v-East Sussex Valuation Tribunal ex-parte Silverstone* (unreported The Times 10<sup>th</sup> May 1996) the appellant challenged the decision of the East Sussex Valuation Tribunal by way of judicial review. The facts of the case were that the applicant bought the property at 24 Marwick Terrace, St Leonard's on Sea. When he bought it in April 1993, the property consisted of two flats (both included in the initial valuation list in band C) and he converted them into one unit. When the work was completed the applicant sought to have the valuation list amended on the basis that the dwellings should have been listed as one entry (in band C). The band category was chosen by the applicant as he argued that the property was divided into two flats in 1991 but one was tenanted and so that house could not have been sold with vacant possession and due to the state of the property he only paid £60,000 for it in April 1993 and the house prices have fallen 25% since 1991. The listing officer believed that the property should be altered to one property in Band E – (a higher band than Band C). Mr Justice Carnwath heard the case under a residual judicial review jurisdiction notwithstanding that the applicant had used an incorrect procedure and dismissing the application for judicial review he held:

“The assumption prescribed under the [local Government finance] expressly making the mandatory mandatory. An assumption is by definition a hypothesis which may be adopted whether or not it is, in fact, true. The making of assumptions is a familiar concept in valuation law. For example, in the Land Compensation Act 1961 there are certain prescribed “assumptions” as to planning permission and they are applied whether or not the particular planning permission has been given. The whole purpose of such assumptions would be lost if it were open to individual owners, or indeed individual authorities to rebut the presumptions by reference to evidence of individual cases. The statutory provisions are quite clear on this point, but what I have also said also accords with the Scottish Authority to which I was referred, an assessor of Strathclyde-v-Rea, *The Scotsman*, and 30<sup>th</sup> August 1995. I have also been referred to those articles on the

council tax. Some of them criticised the way in which the assumptions have been formulated and suggest they are unrealistic, but there is no suggestion that they can be displaced by evidence.”

53. In the case of *the Appeal of Lanarkshire Valuation-v-Valuation Appeal Committee RVR 2003 at Page 6* the Court held that the Valuation Committee decision to reduce the assessment of the dwelling to reflect the defects which were presented was quashed, since the defects were capable of being corrected. The dwelling had to be valued on the assumption that it was in a reasonable state of repair and therefore no reduction in assessment should have been made.
54. As a matter of law the Tribunal finds that the Commission has applied the capital valuation statutory assumptions correctly for valuation in this matter and follows the persuasive authorities of England and Scotland.

### **EVIDENTIAL ISSUES RE THE VALUATION**

55. In applying the said statutory assumptions under Schedule 12 of The Rates (Northern Ireland) Order 1977 as amended, the Tribunal is mindful that the evidence has to be considered with regard to specific circumstances which apply to the property subject to appeal. The Tribunal has to make its decision based on the evidence provided to it at hearing. Details of any open market sales transactions as close to 1<sup>st</sup> January 2005 that are provided to the Tribunal must be taken into consideration by the Tribunal when arriving at its decision.
56. The appellant’s property at 15 Seahaven Avenue has a GEA of 85m<sup>2</sup> and a garage of 15m<sup>2</sup> and is currently entered in the Valuation List at £85,000. A similar detached property, located at 13 Seahaven Avenue with a GEA of 90m<sup>2</sup> and a garage of 14m<sup>2</sup>, is currently assessed at £85,000. Another property in the same location, namely 21 Seahaven Avenue is also currently assessed at £85,000, despite the fact that this property is slightly smaller than the subject property with a GEA of 84m<sup>2</sup> and a garage of 15m<sup>2</sup>.
57. The Tribunal notes that a semi detached property located at 1 Seahaven Close with a GEA of 84m<sup>2</sup> and a garage of 18m<sup>2</sup>, is currently entered in the valuation list at £85,000. This property was in fact sold on the open market in March 2006 for £107,950 with a full turnkey finish. In addition, a detached park home located at 2 Seahaven Close with a GEA of 79m<sup>2</sup> and a garage of 14m<sup>2</sup>, is currently entered in the valuation list at £85,000. This property was sold on the open market in October 2005 for £100,000. A property located at 4 Seahaven Close with a GEA of 83m<sup>2</sup> with no garage was valued at £82,500 but nonetheless sold in November 2005 for £99,950 and a property located at 5 Seahaven Close with a GEA 79m<sup>2</sup> with no garage was also valued at £82,500, and was sold on the open market in March 2006 for £104,950. The Tribunal notes that the appellant purchased the subject

property in August 2007 for £194,950.

58. The Tribunal accepts the evidence of Mr James, an experienced valuer, that the tone of the valuation list has been set for properties at Seahaven and that the statutory assumptions have been correctly made in arriving at the valuation of the subject property.
59. In upholding the capital valuation figure of £85,000, it is the Tribunal's view that the respondent has previously taken into account the issues raised by the appellant in respect of the subject property when the initial assessment of capital value was reduced from £100,000 to £85,000.
60. The Tribunal is thus satisfied that the approach of the Commissioner on appeal in assessing the capital value of the subject property was in keeping with the manner prescribed by Section 12, Paragraph 7 (and following) of the Rates (Northern Ireland) Order 1997.
61. The Tribunal did not find that the respondent's decision on appeal was manifestly incorrect. Both the valuation of analogous properties in the same street of £85,000 and the open market sales evidence of 2 Seahaven Close in October 2005 for £100,000 and the open market sales evidence of 1 Seahaven Close in March 2006 for £107,950 leads the Tribunal to concur that the valuation of £85,000 in respect of the subject property is correct.
62. The Tribunal is very grateful to the appellant and the respondent for the time and effort they have expended in preparing their submissions both in written evidence and in the oral presentation of their respective cases. In this case the Tribunal did not find that the appellant had produced sufficient evidence to displace the statutory presumption that, "any valuation shown in the valuation list with respect to a hereditament shall be deemed to be incorrect until the contrary is shown".

## **DECISION**

63. The Tribunal's unanimous decision is that the Commission decision and appeal is upheld and the appellant's appeal is dismissed.

**Stephen Wright, Chair**

**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties:**