

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

CASE REFERENCE NUMBER: NIVT17/10

DAVID STAFFORD - APPELLANT
AND
COMMISSIONER OF VALUATION - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Stephen Herron

Members: Mr Gordon Jackson FRICS and Mr David Rose

Belfast, 14 February 2011

DECISION

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

REASONS

Introduction

1. The Appellant appeared at the tribunal and represented himself. He was accompanied by a supporter who did occasional work for him. The Respondent was represented by Mr Rodney McVitty accompanied by Mr Gordon Bleakley

2. The property the subject of the appeal is 15 Drumcor Road, Tempo, Enniskillen, BT94 3GA. It is a detached property constructed pre 1919 and renovated in 1997. It has a gross external area of 224m² and an outbuilding of 175m².
3. By way a Commissioner's Decision on Appeal dated 24 September 2010 the Respondent upheld the capital value of the property of £145,000 (as at 1st January 2005, the relevant capital valuation date). The Appellant appealed against this decision under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order").
4. The following material was put before the tribunal;
 - 1 Commissioner's decision on appeal dated 24 September 2010
 - 2 Notice of appeal received on 20 October 2010 accompanied by photographic evidence and letters from the Appellant dated 30 June 2010, 2 August 2010 and 25 August 2010
 - 3 A letter from Fermanagh District Council to the Appellant dated 9 August 2010
 - 4 Respondent's presentation of evidence
 - 5 DVD evidence from the Appellant and 2 albums of photographs
5. The tribunal gave an oral decision upholding the capital valuation of the property. This notice confirms that decision and contains the tribunal's reasons for the decision in accordance with Rule 19 of The Valuation Tribunal Rules (NI) 2007.

The Law

6. The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order").
7. The tribunal considered the terms of the Schedule 12 of the 1977 Order as amended which states as follows;
 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.

8. Article 54(3) of the 1977 Order provides that, on appeal, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.

The Evidence and Submissions

9. It was clarified with the Appellant that the issue at the heart of his appeal was the fact that the Respondent had not allowed any reduction in capital valuation for the nuisance caused by the storage of bales on land adjoining his property. To this extent the Appellant did not take issue with the valuation of his property or any of the comparables identified by the Respondent, rather his argument was that the £145,000 valuation should be reduced taking into account the nuisance which diminished his enjoyment of same.
10. The Appellant gave evidence that he had bought the subject property in 2007 for £190,000. At the time the property was purchased the Appellant was aware that the land to the front of his property, accessed via a shared laneway, was used for bale storage. It was established that the land was owned by a company but was let on a conacre basis to a farmer who stored the bales for use throughout the winter.
11. The evidence from the Appellant was that when he first moved into his house there were only a relatively small number of bales stored on the adjoining land. There was an open silo pit and sheds which have subsequently been removed. The Appellant stated that over the 4 years which he had been living at his property the amount of bales stored there had steadily increased. It was stated that there are bales on the land 12 months a year and that there can be a maximum of between 800-1000 bales stored at one time. The Appellant indicated that not only did this impact on the view from his property, but the bales gave off a very unpleasant smell and provided a home for rats and mice and attracted an inordinate amount of flies in summer months. Furthermore the Appellant stated that the farmer visited the storage site perhaps twice a week. This could cause problems for the Appellant as the shared lane could be blocked by the vehicle used to take away the bales and the lane was often left unclean with muck or other debris strewn around.

12. To illustrate the problems resulting from the bale storage, the Appellant produced camcorder footage and photograph albums which were viewed by the Respondent and the tribunal panel with commentary from the Appellant. The footage showed the laneway to the property after there had been slurry spraying in the adjoining field beside the area in which the bales were being stored. There was slurry left on the laneway which the Appellant had to have cleaned. Other problems evident from the footage included a rotten bale which was left open and the plastic from ripped bales being blown onto the Appellant's property.
13. The Appellant stated that the extent of the nuisance became a particular problem for him when he put his property up for sale and viewers seemed to be put off by the presence of the bales. Attempts had been made to address the problems with the farmer who used the bale storage area and also the landowner, but these had proved difficult and ultimately unsuccessful.
14. The Respondent recognised that the issues raised by the Appellant would have an impact on his enjoyment of the subject property. The point was made by the Respondent that the bales were a temporary structure and the number being stored would fluctuate depending on the time of year. The transient nature of the nuisance meant that a reduction in capital value could not be applied. It was queried with the Respondent whether a reduction could be applied now and then the valuation reassessed if the nuisance ceased at a future date. It was conceded that this would be possible but a difficulty would be that the Respondent would not know if the adjoining land stopped being used for bale storage. The Respondent considered that the issues surrounding the use of the bale storage area fell to be addressed with the landlord and tenant and that there were other avenues open to the Appellant to pursue.

The Tribunal's Findings

15. The Tribunal considered that it was theoretically possible for the valuation of the subject property to be reduced owing to the nuisance connected with the bale storage, even though it would have to be classified as a temporary nuisance. However in practice it would be difficult to apply a reduction as (i) the problems caused by a nuisance were worse at some times than others and would be difficult to quantify in terms of an appropriate reduction, and (ii) the Respondent would have no way of knowing if the nuisance was brought to an end or was substantially lessened. The Tribunal also found that some of the problems associated with the bale storage were those of a type which one encountered when living in a rural setting e.g. the presence of vermin and household flies in the summer months, and it was difficult to assess how much

these issues were a particular problem for the Appellant due to the storage of bales near his land. The capital valuation of the subject property was found to be in keeping with the tone of the list, and it was not found that the Appellant had displaced the statutory presumption or that Respondent's decision on appeal was manifestly incorrect.

Decision

16. The tribunal's unanimous decision is that the Commissioner's decision on appeal is upheld and the appeal is dismissed

**Mr Stephen Herron, Chair
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: *7 April 2011*