

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: 02/11

DOMINIC LOUGHREY - 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 appellant's appeal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland is allowed. The capital value of the hereditament situated at 50 Strand Road East, Crossreagh, Tullaghmurry West, Portstewart BT55 7LX, is assessed by the tribunal at £245,000 and the tribunal Orders that the Valuation List shall be amended accordingly.

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant requested an oral hearing of his appeal. The matter was listed for hearing at Ballymena on 19 September 2011 and Mr Matthew McAlister FRICS appeared on behalf of the appellant at hearing. The respondent was represented by Mr Patrick Gallagher and Ms Susan Henderson. After hearing evidence and submissions in the matter, the tribunal determined that an inspection of the subject property and of the comparables and the general locality was appropriate and thus the matter was adjourned to enable the inspection to be

conducted. The inspection by the tribunal took place on 6 October 2011 at Portstewart.

2. The appellant, by Notice of Appeal received by the Office of the Tribunal on 20 April 2011, appealed against the decision of the Commissioner of Valuation on appeal dated 31 March 2011 in respect of the valuation of a hereditament situated at 50 Strand Road East, Crossreagh, Tullaghmurry West, Portstewart BT55 7LX (“ the subject 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”). 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, for the reason that these provisions have been fully set out in many decisions of this tribunal, which are readily available. All relevant statutory provisions and principles 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 from the appellant. The tribunal relied in this matter upon documentation adduced in evidence, including evidence relating to the comparables (these being potentially comparable properties from which evidence of capital valuation may be drawn for statutory purposes) put forward on behalf of both parties. The tribunal, further, placed reliance upon the tribunal’s own inspection of the subject property and of the comparables and of the general circumstances and locality in which the subject property is situated. 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 31 March 2011.

4.2 A document entitled "Presentation of Evidence" prepared on behalf of the Commissioner as respondent by Mr Patrick Gallagher MRICS and submitted to the tribunal for the purposes of the tribunal hearing.

4.3 A document entitled "Statement of Case" prepared on behalf of the appellant by Mr Matthew McAlister FRICS and submitted to the tribunal for the purposes of the tribunal hearing.

4.4 Correspondence between Land and Property Services and Mr McAlister and between the tribunal and the parties.

5. The subject property consists of a dwellinghouse situated at 50 Strand Road East, Crossreagh, Tullaghmurry West, Portstewart BT55 7LX. The appellant is understood to be the ratepayer. The subject property is a detached dwelling house, situated on a sloping site and located amongst other residential properties in an area of land between Strand Road and O'Hara Drive on the outskirts of Portstewart. The subject property is somewhat unusual in that, whilst its postal address is Strand Road Portstewart, the subject property is situated substantially below the level of Strand Road. Upon inspection, in practical terms, the subject property could only be readily accessed from O'Hara Drive. This is so for the reason that the potential access to the subject property from Strand Road consists of a small pedestrian gate leading to steps which descend down to the frontage of the property facing Strand Road. At the time of inspection by the tribunal, this pedestrian gate was closed and was locked or mechanically barred in what appeared to be a semi-permanent fashion, so as to prevent public access. As the tribunal understands it, there had been difficulties with members of the public using this pedestrian gate as a right of way or some manner of a shortcut. From O'Hara Drive, the subject property is readily accessed up a rather steeply sloping site both from a driveway leading towards the garage and also from another gated vehicular or pedestrian access. The subject property was constructed in the 1930's, with a measured gross external area ("GEA") of 180m². The subject property has an integrated detached garage measured at GEA 28m², this being located at a lower level, below the floor level of the dwellinghouse. The subject property was further described in the Presentation of Evidence report (which

statements of fact were not contested by the appellant) as having mains electricity, water, sewerage, central heating (oil) and part PVC/double glazed and part wood single glazed windows. The subject property comprises on the ground floor a hall, a living room, a kitchen/dining room, a sitting room, an office, a store, a bath/WC room and on the first or upper floor three bedrooms (one ensuite) and a bathroom and WC. The capital value under appeal was originally assessed as at 1 January 2005 (that being the antecedent valuation date, or "AVD") at a figure of £330,000 and that latter figure was then reduced, on Certificate of Valuation, on 19 January 2011 to £300,000. That revised figure was then reduced, on Commissioner's Decision on Appeal, on 31 March 2011 to £270,000.

6. The Commissioner's submission, as respondent, 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 Presentation of Evidence, with further particulars given thereafter in respect of the comparables, including photographs of the comparables. There are eight comparables presented in total including the subject property, all being located in Portstewart and all within relatively close proximity to the subject property. None of these comparables have included sales value evidence. However, the Presentation of Evidence expressly states (save for one comparable and the reason for that omission is not entirely clear) that the other comparables represent unchallenged capital value assessments. The respondent's submitted comparables consist of the subject property at 50 Strand Road and in addition the following properties: 65 Strand Road, 99 Strand Road, 10 Prospect Avenue, 39 Strand Road, 1 O'Hara Drive, 2 Berne Avenue, 4 Rock Drive and 1 Rock Drive, all being in Portstewart. In response to the Commissioner's Presentation of Evidence, Mr McAlister on behalf of the appellant has included in his Statement of Case photographs of, and references made in regard to, other properties located at 42A Strand Road, and 42 Strand Road, Portstewart.

THE SUBMISSIONS

7. It is not necessary in this decision fully to recite and to address all of the points made on behalf of the appellant and on behalf of the respondent in the matter. In

summary, Mr McAlister for the appellant has submitted that the issue of the effect on capital value of a sea view is one that needs to be carefully considered by the tribunal. He submits that there are varying qualities of sea view; to apply a rigid percentage factor (as he contends that the respondent has done) is inappropriate. Further, he states, in this exercise to place over reliance upon the size of the hereditament and lesser reliance (proportionately) upon layout, accommodation, condition and situation, is inappropriate. Here, Mr McAlister is referring to the particular characteristics of the subject property and to its specific location in Portstewart. Whilst it is accepted by him that premiums may be paid for Strand Road properties and for frontage sites in O'Hara Drive and Rock Road, the remainder of the sites at O'Hara Drive do not attract such a premium, he argues. Effectively, because of the particular access situation and location, the subject property may properly be regarded as being, in reality, located at O'Hara Drive and not at Strand Road. Mr McAlister does accept that there is a limited sea view but asserts that this is inevitably going to be restricted when a substantial cleared site which has been recently sold is fully developed, leading inevitably to substantial interference with, and in respect of, the limited sea view available presently to the subject property. The submission is that the capital valuation is excessive when compared with other hereditaments in the immediate area and that the age, condition and situation of the subject property have not been properly reflected in the ascribed valuation; the proper valuation ought to be a figure of between £165,000 and £200,000, Mr McAlister submits.

8. For the Commissioner, as respondent, it has been contended that the valuation was conducted upon the statutory basis and that the amended valuation, a figure of £270,000, placed the property in tone with surrounding comparable properties. In respect of the contention that the valuation was excessive when compared with other hereditaments, a summary analysis has been put forward in respect of the seven identified comparables, with reference to the subject property. In respect of the age, condition and situation of the subject property, it is confirmed as accepted that the dwellinghouse was built in the 1930's and has been virtually unchanged since then. There is evidence reported of cracking in the joints of the brickwork in the rear and side elevations and some joints have been filled with mastic. Photographs have been provided of this. There is evidence of settlement in pathways surrounding the dwelling, again supported by photographic evidence, as is the evidence that the

steps leading up from the garage to the rear door are falling away from the wall. Further, the timber supports for the first floor overhang are showing signs of rot and the metal lintel over the garage door is showing signs of rusting. There does not appear to have been any maintenance or external decoration carried out in recent years. The house fronts Strand Road but only has pedestrian access down steps from the footpath. There is car access to the rear from O'Hara Drive via Berne Road. The house is located on a sloping site. The dwelling is considered to have a sea view (limited) over O'Hara Drive to the sea and Portstewart beach in the background. It is contended that from the analysis of sales evidence, pre-domestic revaluation, an uplift in value of 25% for a limited sea view and of 50% for a full sea view, has been established in Portstewart. For the respondent it is contended that, considering the evidence from the comparables, the capital value, without more, should be £320,000. A 5% reduction afforded for location and access and a further 10% reduction for external repair issues then produces (by approximate computation) a value of £270,000, which latter figure is contended to be the proper capital valuation as adjusted.

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 at AVD has been assessed (after appeal) at a figure of £270,000. Mr McAlister for the appellant contends that that figure ought properly to be £165,000 - £200,000. On behalf of the Commissioner it has been contended that that figure of £270,000 is fair and reasonable in comparison to other properties taking into account the particular circumstances of the property. 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 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 Mr McAlister on behalf of the appellant on the grounds that have been mentioned above and the submissions are fully noted by the tribunal.
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. Noting the arguments made on behalf of the appellant and the response thereto, the statutory provisions specify 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 subject property. The tribunal thus gave full consideration to all of the evidence and argument including an 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, insofar as these related (as must always be so in these cases) to the statutory basis of valuation. There is no sales evidence and accordingly the case is reliant upon unchallenged capital values as evidence of "tone of the list" in the respondent's submission.
15. Firstly, it must be noted that the general aspect and circumstances of the subject property is singular and any proper assessment, in the particular circumstances of this case, is most easily arrived at by the tribunal's attendance at the subject property and by conducting a site inspection both of the circumstances of the subject property itself and also by viewing the locality and the comparables, these latter all being

located in relatively close proximity. The tribunal noted the difficulty in selection of comparable properties. This was so on account of the particular location and circumstances of the subject property. The tribunal found that certain of the properties selected for comparison were of comparatively little value in terms of weight as these were in good circumstances and well-located and were attractive properties in terms of any potential sale value. In contrast, the subject property is poorly-located and circumstanced, set below low road level at Strand Road, situated upon a considerably sloping site, with access to Strand Road only being gained via a flight of steps and a pedestrian gateway which is now noted to be effectively inoperative. A 5% allowance has been made for that factor, it is noted. Most of the comparable properties, upon inspection, in contrast to the subject property, appeared to range between fair to excellent in terms of external repair, whereas the subject property, as has indeed been accepted by the respondent, is in a relatively poor state of external repair and was assessed as requiring considerable work and expenditure in order to rectify some defects. A 10% allowance is noted to have been made in respect of that factor in arriving at the capital valuation now under appeal.

16. The matter of sea views is submitted to be an issue in the case. The tribunal examined the particular aspects of the sea views (full or partial) in respect of the selected comparables and compared these to the sea view that is available from the subject property. Some of the comparables have full and uninterrupted sea views, for example those at numbers 1 O'Hara Drive and at 1 and 4 Rock Drive. Whilst the respondent's submission in respect of the percentage enhancement is noted and the stated basis for that, it is rather difficult to regard these properties as being very useful in comparison to the subject property when the tribunal has conducted an inspection of the properties and when proper account is taken of the discrete sea view issue as submitted. In regard to those possessing what has been described as a limited sea view, the tribunal noted the quite varied and individual characteristics of such aspects and views and indeed the quite evident difficulty in making any qualitative and quantitative assessment for statutory purposes without attendance on site. The tribunal's attendance and inspection therefore yielded useful information.
17. A submission has been made on behalf of the appellant by Mr McAlister concerning the potential for the subject property's limited sea view to be reduced substantially (or reduced almost to nothing) on account of the development of a substantial

cleared site in close proximity. The tribunal had the opportunity to inspect both the site in question and also the view from the upper floor of the subject property. It is noted that a large dwelling has been quite recently constructed next to the site (to the West) which itself partially obstructs the view from the subject property towards Portstewart Strand. If a similar building were to be erected on the cleared site, the view of any scenic lands and seascape to the West and North would very probably cease to exist, leaving only a very much reduced view over the sea to the North and partly to the East. The tribunal has been invited to take that issue into account on behalf of the appellant. For the respondent, it is contended that if such an obstruction of view were to occur in the future, the appellant could apply for a revision of the capital value at that time. Considering these submissions, the tribunal cannot disregard the potential present or contemporary effect upon capital value (at AVD) if any potential purchaser of the subject property were to be dissuaded or discouraged on account of a realistically and genuinely perceived risk that what limited sea view the subject property might currently enjoy might be reduced or removed entirely in the near future. That consideration is properly to be regarded as a real and present factor or issue bearing upon capital value in comparison to other, otherwise similarly-circumstanced, properties which did not attract that issue.

18. Because the subject property bears no precise comparison with any of the comparables, nor indeed does the subject property bear such a comparison with any of the identified comparators where most of the features of the subject property and any one or more of these comparables are found to align very closely, the tribunal proceeded to conclude a determination of the matter upon the available evidence. The tribunal is tasked, as required by the statutory provisions, with extracting whatever information and evidence can be gleaned from the other properties mentioned. That task includes attaching appropriate weight to all of the relevant and material information and evidence to the necessary and appropriate degree. This included examining the various aspects and circumstances of the comparator properties as set forth in the documentation and also such information and evidence as could be drawn from the tribunal's own inspection. Taking fully into account the abatements that have already been applied in arriving at the capital value now under appeal (that is to say the figure of £270,000) the tribunal determines unanimously that the proper assessment of capital value of the subject property is £245,000. Accordingly the appellant's appeal is upheld and the tribunal Orders that the

valuation list shall be amended accordingly to a capital value for the subject property of £245,000.

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

Date decision recorded in register and issued to parties: