

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: 25/10

EDWARD STIRLING - 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

Ballymena, 19 September 2011

DECISION ON REVIEW

The unanimous decision of the tribunal is that there are no proper grounds made out by the appellant to enable the tribunal to review the decision of the tribunal promulgated on 22 April 2011 and thus the tribunal's decision is affirmed and the appellant's application for a review is dismissed, without further Order.

REASONS

Introduction

1. This is a review of the tribunal's decision ("the decision") in respect of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The decision was issued to the parties by the Secretary of the Northern Ireland Valuation Tribunal ("the Secretary") on 22 of April 2011.
2. The Secretary received a letter dated 6 May 2011 from the appellant which was taken to constitute a request to the tribunal to review the decision. In order to clarify the matter and any requested grounds for review mentioned in that letter, the

Secretary wrote to the appellant by letter dated the 25 May 2011 indicating that the appellant's request appeared to be for a review of the decision and to contain the following four points:-

- the appellant's house was three miles from Ballymena, not one mile;
- Land and Property Services had taken some photographs of the back of the appellant's house which were not presented as evidence to the tribunal hearing unlike the photographs of the front of the appellant's house taken by Land and Property Services and this was in some way unfair to the appellant;
- the appellant's house had central heating which was in regular use, but the tribunal's decision stated that the appellant's house had no central heating; and
- there had been no evidence presented to the tribunal hearing about whether or not the four houses used as comparables to the appellant's house had any damp, but the appellant's house clearly had damp from the photographs presented as evidence to the tribunal hearing.

3. In the letter from the Secretary the appellant was requested to clarify in writing if these four points were correctly interpreted and understood as forming the basis of the review request or if the appellant wished to clarify anything or to add anything further to his request for a review. On account of an injury, the claimant was unable to reply in writing to the Secretary's letter. However he telephoned the Secretary on 6 June 2011 and he confirmed that the foregoing four points were correctly interpreted and that he had nothing further to add to his application for a review. He requested an oral hearing of the review application to be held at Ballymena.
4. The respondent was duly notified of the appellant's request for a review and indicated that it was felt that there was nothing of sufficient weight to impact on the decision made by the tribunal.
5. An oral hearing of the review application was arranged and proceeded on 19 September of 2011. The appellant, Mr Stirling, attended and represented himself and the respondent was represented by Mr Gareth Neill accompanied by Ms Susan Henderson.

THE APPLICABLE LAW

6. The Valuation Tribunal Rules (Northern Ireland) 2007 (“the Rules”), as amended, provide at Rule 21 as follows in respect of the review of any decision of the Tribunal:-

“21.—(1) If, on the application of a party or on its own initiative, the Valuation Tribunal is satisfied that—

(a) its decision was wrong because of an error on the part of the Valuation Tribunal or its staff; or

(b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented; or

(c) new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; or

(d) otherwise the interests of justice require,

the Valuation Tribunal may review the relevant decision.”

THE HEARING AND THE ARGUMENTS

7. The tribunal at the outset of the hearing assisted the appellant by explaining these statutory grounds and providing clarification to the appellant concerning which of the foregoing statutory grounds might be available to the tribunal to conduct a review of the decision. The tribunal, firstly, explained to the appellant that he would have to initially establish proper grounds upon which the tribunal might proceed to review the decision. If he failed to do that the review could not proceed. Then, after discussion it was agreed that the only possible ground identified by the appellant was that contained within Rule 21 (d) of the Rules, the so-called “*interests of justice*” ground. The tribunal then heard argument on the appellant’s part as to why the tribunal should properly review the decision on foot of that specific ground and the respondent’s argument to the contrary.

THE SUBMISSIONS

8. The appellant's arguments in respect of each of the issues raised by him in his said review request letter (as subsequently clarified by the tribunal) and the responses thereto on behalf of the respondent were as follows:

- *The appellant's house was three miles from Ballymena, not one mile.*

8.1 The appellant contended that his house was actually 3 miles from Ballymena Town Hall. The respondent's representative mentioned that in the Presentation of Evidence that had described the property as being 1 mile from the outskirts of Ballymena and therefore it was contended that nothing of substance turned on the point in valuation terms. When questioned further by the tribunal as to any issue emerging from this, Mr Stirling was unable to clarify how this might have had any effect or bearing upon the capital value issue determined by the tribunal in the decision.

- *Land and Property Services had taken some photographs of the back of the appellant's house which were not presented as evidence to the tribunal hearing unlike the photographs of the front of the appellant's house taken by Land and Property Services and this was in some way unfair to the appellant.*

8.2 The appellant contended that Land and Property Services had taken some photographs of the back of his house but had not presented these in evidence as these disclosed that a rear door to the property was in poor condition. He suggested that this had been done intentionally to try and show the property in a better condition externally. The respondent's representative indicated that it was accepted that the property had a rear door in fairly poor condition; that was an external repair issue of very minor significance and would not have materially affected the capital value assessment.

- *The appellant's house had central heating which was in regular use, but the tribunal's decision stated that the appellant's house had no central heating.*

8.3 The appellant at hearing clarified the position, explaining to the tribunal that the property did have central heating but that this was not in working order. The respondent's representative indicated that the property had been assessed as not having working central heating on that basis. The tribunal sought

clarification from the appellant as to whether or not this in his view would enhance or reduce the potential capital value, but the appellant was unable to clarify this and he expressed no view on the issue.

- *There had been no evidence presented to the tribunal hearing about whether or not the four houses used as comparables to the appellant's house had any damp, but the appellant's house clearly had damp from the photographs presented as evidence to the tribunal hearing.*

8.4 The appellant stated that the respondent ought to have clarified whether or not any comparables had damp present to the same degree as he had in his property. The respondent's representative drew the tribunal's attention to the statutory assumption which had been referred to by the tribunal in the decision (see paragraph 11 of the decision) and contended that there was no substance in this point. The dampness issue affecting the property had been properly accounted for, the respondent's representative contended, being mentioned in the respondent's evidence at hearing and the capital value had been properly assessed by the respondent. The tribunal had fully and properly taken account of this issue in the decision.

THE TRIBUNAL'S DETERMINATION OF THE ISSUES

9. The tribunal notes the statutory power available to it on foot of Rule 21 of the Rules. The appellant has endeavoured to make out a case, based upon one available statutory ground, that the tribunal is entitled to conduct a review of its decision on that ground, that being the "*interests of justice*" ground which is provided for by Rule 21 (d) of the Rules. The respondent has opposed that application saying that there is no real substance in the appellant's contentions.
10. Examining carefully the appellant's submissions, the tribunal cannot see how the appellant has made out any sustainable or persuasive case on any of the points raised by him as grounds of possible review under the "*interests of justice*" ground contained within Rule 21 (d) of the Rules. The tribunal's decision has recorded in summary form the essential findings of fact derived from evidential material which was placed before it. The tribunal had considered the submissions and the

arguments made in the course of the original hearing and the tribunal had dealt with and had disposed of these in the decision. In the absence of any identified authority within the tribunal's own (and comparatively recent) jurisdiction being drawn to the tribunal's attention, the tribunal is of the view that the "*interests of justice*" ground ought properly to be construed fairly narrowly; that certainly appears to be the accepted practice in other statutory tribunal jurisdictions. Thus the "*interests of justice*" ground might, for example, be seen to apply to situations such as where there has been some type of procedural mishap. One illustration of this might be a situation where the tribunal had prevented a party from arguing an essential part of any case, or perhaps where there was some type of procedural imbalance or injustice applicable to the conduct of any hearing. Another illustration might be perhaps where the tribunal had disregarded significant evidence in any case, without proper explanation. Generally, however, it is broadly accepted that the "*interests of justice*" in any case must properly encompass doing justice not just to the dissatisfied and unsuccessful party who is seeking a review but also to the party who is successful. Further, there is an important public interest in finality of litigation. The overriding objective contained within the tribunal's Rules also bears upon the matter.

11. The tribunal takes particular note of a number of matters. Firstly, the appellant was afforded at the original hearing of the matter by the tribunal the opportunity to take whatever time he wished to present his case and his evidence and to address and properly deal with as he wished the respondent's case and evidence. The appellant in one of the issues raised by him now seeks to refer to photographic evidence not presented on behalf of the respondent at the original hearing and to the condition of a rear door to the property which was at no stage raised by him at the original hearing of the matter. He has sought to re-argue at this hearing that the dampness problem affecting the property is worse than had been concluded by the tribunal on the basis of the evidence that had been presented at the original hearing. He has made reference to the distance of his property from central Ballymena without clarifying any point arising that might in any manner affect the substance of the decision. He has made no persuasive argument against the respondent's case that the tribunal was correct in the application of the statutory assumption concerning the property being in an average state of internal repair and condition, having regard to the age and character of the property and its locality. The appellant has raised an issue concerning non-functioning central heating without the submission of any case

as to how in any way that might have an affect upon statutory assessment of capital value. Mere dissatisfaction with the decision, without more, is insufficient. Thus, the tribunal has considerable difficulty in seeing how there are any available grounds to form the proper basis of a review of the tribunal's decision, in the "*interests of justice*".

12. Examining the case made by the appellant and the submissions made on behalf of the respondent, the tribunal's unanimous determination is that nothing presented by the appellant affords any basis for the decision to be reviewed. Accordingly the tribunal's decision is affirmed as promulgated and appellant's application for a review is dismissed by the tribunal, without further Order.

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

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