

NORTHERN IRELAND VALUATION TRIBUNAL

The Rates (Northern Ireland) Order 1977 and the Valuation Tribunal Rules (Northern Ireland) 2007

Case Reference Number: 8/10

JACLYN DEACON – Appellant

and

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – Respondent

Chairman: Garrett E. O' Reilly

Members: Ms Siobhan Corr MRICS and Mr. Hugh Mulholland

Date of hearing: 04 October 2010

Hearing

1. This Hearing was an appeal to the Northern Ireland Valuation Tribunal under Article 54 of the Rates (Northern Ireland) Order 1977 (as amended by the Rates (Amendment) Order 2006) (the 1997 Order).
2. The Appellant had duly served a Notice of Appeal against a Decision of the Respondent whereby the Respondent declined to amend the capital value of a Second Floor Apartment at 8, Rossdale Manor, Tullagharley, Ballymena, County Antrim BT42 2SL (the Property) from £140,000.00.
3. In the Appellant's Notice of Appeal she contended that the capital value of the Property should be less than £120,000.00.
4. The parties having given their prior consent in writing in accordance with Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007 the appeal was determined upon the basis of written representations.
5. There was no personal appearance by or on behalf of either of the parties.

Legislation governing the Hearing

The legislation relevant to this Appeal and the assessment of the capital value of a property is governed by paragraph 7 of Schedule 12 to the 1997 Order and Article 54 of the 1997 Order, and insofar as is material to this Appeal, Schedule 12 provides-

1. "7-(1) Subject to the provisions of this Schedule, for the purposes of this Order the capital value of the hereditament shall be the amount which, on the assumptions mentioned in Paragraph 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"; (the Statutory Sale Valuation).

2. 7-(2) "In estimating the capital value of a hereditament for the purposes of any revision of the valuation list, regard shall be had to the Capital Values in the valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised"; (the Statutory Comparables Valuation);

3. 7-(4)(1) "relevant capital valuation date means the 1st January 2005"; (the Capital Valuation Date); and

Article 54(3) of the 1977 Order provides-

"any person other than the Department who is aggrieved by a decision of the Commissioner may appeal to the Northern Ireland Valuation Tribunal. On any such appeal any valuation shown in a valuation list is deemed to be correct until the contrary is shown".

Evidence before the Tribunal

The Tribunal did not hear any oral evidence from either the Appellant or the Respondent.

The following documents were before the Tribunal for consideration of the Appeal:-

(a) The Respondent's Decision dated 29th April 2010;

(b) The Appellant's Notice of Appeal date stamped as received the 24th May 2010 by the Tribunals Unit;

(c) A document entitled 'Presentation of Evidence' prepared on behalf of the Respondent by Mr Gareth Neill and submitted to the Tribunal for the purposes of the Hearing (the Presentation); and

(d) An email from the Tribunal to the Appellant dated the 13th August 2010 confirming that the Respondent's Presentation of Evidence had been posted to her; an email dated the 6th September 2010 from the Appellant to the Tribunal and an email dated the 9th September 2010 from the Respondent to the Tribunal and copied by the Tribunal to the Appellant.

Appellant's Evidence

The Applicant did not adduce any evidence to support her contention that the Capital Value of the Property should be less than £120,000.00 other than in her Notice of Appeal she stated

1. "Semi detached houses in the same area that is 122.00 square metres is rated at £120,000.00"

2. "Apartments are worth less than houses in the Ballymena area"

3. "When the properties were being sold the same size house in Rosssdale was £30,000.00 dearer than my apartment"

Respondent's Evidence

1. The Presentation stated that the Property was built in 2008 and purchased in November 2008 by the Appellant for £130,000.00 and that its capital value had been assessed at the Capital Valuation Date £140,000.00.

2. The Respondent said in this assessment of the capital value of the Property that under the Statutory Comparables Valuation it was necessary to have regard to properties deemed as comparable to the Property and to do so in the Presentation he described the Property as:-

“a modern single level self contained apartment 3 bedroom apartment located on the second floor of a block of 16 Apartments. Subject has communal intercom controlled external access with communal stairwell and communal on-street parking.” Further he specified that the Property has a Net Internal Area (NIA) of 118 square metres of brick block construction with tile pitched roof and pvc windows with mains electricity, water and sewerage situated close to local shops. This information was repeated in the Presentation under the heading “Subject Property Description” at the commencement of the Presentation and also in Part 1 of Appendix 1 of the Presentation.

3. Three properties were proposed as being comparables:-

Comparable No.1 - 7, Rossdale Manor is in the same building as the Property and is described in Part 2 of Appendix 1 of the Schedule of Comparisons annexed to the Presentation using the same wording as in the Property description save that it is “beside subject, is a 2 bedroom apartment with a NIA of 97 square metres and a capital value assessment of £120,000.00.” The capital value assessment of Comparable No.1 is shown as “not challenged”.

Comparable No.2 - 6, Rossdale Manor is in the same building as the Property and is described in Part 3 of Appendix 1 of the Schedule of Comparisons annexed to the Presentation using the same wording as in the Property description save that it is “below subject, is a 2 bedroom apartment with a NIA of 78 square metres and a capital value assessment of £97,500.00”. Again this capital value assessment of Comparable No.2 is shown as “not challenged”.

Comparable No.3 - 21, Rosses Manor is detailed as a modern single self contained apartment in the Tullygarley area of Ballymena with a NIA of 81 square metres having a capital value assessment of £105,000.00. It is shown close to the Property on the Location Map attached to the Presentation. Again this capital value assessment of Comparison No.3 is shown as “not challenged”.

4. Further he submitted that properties which are semi detached houses are not as strong comparables as the apartment Comparable Nos.1, 2 and 3.

5. Finally he submitted that he had made his capital value assessment in accordance with the provisions of the 1977 Order, having regard to the particular attributes of the Property compared to those of his comparables and on the basis of the legislation he was of the opinion that a reasonable estimate of the capital value of the Property as at the Capital Valuation Date was £140,000.00.

Consideration of the Evidence and Submissions

There was nothing of any significance to the Appeal in the emails before the Tribunal.

In October 2010 it is difficult to assess the value of a property on the 1st January 2005 and even more difficult when that property was not built until 2008. Neither the Appellant nor the Respondent made any attempt to make a Statutory Sale Valuation of the Property. The Tribunal did not have any submission in this regard and therefore considered that it was not necessary to consider a Statutory Sale Valuation of the Property.

In this circumstance the only basis to assess the capital value of the Property is using the Statutory Comparables Valuation.

Appellant's Evidence and Submissions

The Appellant's submission was that three semi detached houses in the same area of the same size as the Property have capital values of £120,000.00 and apartments are worth less than semi detached houses in the Ballymena Area. It is respectfully suggested that this interpretation of her submission by the Tribunal is the most favourable possible interpretation to assist the Appellant's case. Evidence in relation to these three semi detached houses or their capital valuations was not furnished to the Tribunal by the Applicant (or by the Respondent). Further the Tribunal interpreted the Appellant as supporting her submission that Apartments are worth less than houses in the Ballymena Area by claiming that when apartments were being sold in Rossdale houses of the same size in that area were £30,000.00 dearer than her apartment. The Appellant did not adduce any evidence to support the proposition that these properties were comparables to the Property. The Appellant did not dispute that the Respondent's three properties in the Presentation were comparable.

Respondent's Evidence and Submissions

1. The Tribunal considered that it could not but accept that the Respondent was completely entitled to use Comparable Nos.1 and 2 in the same Building as comparable properties. It also considered that the Respondent was entitled to use Comparable No. 3.

The Tribunal noted that all three comparables supported an assessment of £140,000.00 in respect of the capital value of the Property and that this assessment seemed to be primarily based on arithmetical calculations of the NIAs of the Property and the comparables. The Respondent did not give any more helpful general valuation information on the comparables and the Tribunal questioned the lack of information and valuation guidance for apartments in this regard. The Tribunal considered that the different positioning of apartments or the number of bedrooms in the same Building might result in an adjustment of values from an arithmetical NIA basis being appropriate. The Tribunal envisaged that it might not be unusual for the capital values of a Penthouse apartment, a middle floor apartment and a ground floor apartment in the same Apartment Building not being based on a simple NIA calculation.

The Tribunal did note from the Presentation that Comparable No.1 was a two bedroom apartment "beside" the Property and felt entitled to interpret this to mean

that it was adjacent to and on the same floor as the Property in the same state and circumstances.

The Tribunal also noted from the Presentation that the capital values of all three Comparable Nos. 1, 2 and 3 were “not challenged”. It is a reasonable assumption their sale prices and dates would have been detailed as the sale price of the Property had been in the Presentation. The Tribunal considered a proper interpretation of the non challenge was that the comparables had not been sold at any time since their construction in 2008. The Tribunal was left to assume that the assessment of the capital value of the Property by the Respondent was being justified solely on its own assessments of capital values of the comparables.

2. Having regard to the Statutory Comparables Valuation the Tribunal agreed with the Respondent’s submission that semi detached houses are not as strong as his comparables.

3. Finally the Respondent submitted that the capital value of the Property had been assessed in accordance with provisions of the Rates Order 1977, which he did not set out but, inter alia, in accordance with the legislation governing this appeal means that any valuation shown in a valuation list with respect to a property shall be deemed to be correct until the contrary is shown. Accordingly and most significantly the onus of proving that the capital values of the comparables are not correct is placed on the Appellant.

Decision

The Tribunal considered the evidence in respect of the comparables and was satisfied on the balance of probabilities that the Respondent’s comparables were valid comparables within the legislation. The Tribunal then considered the issue of the presumption of correctness of the capital values of these comparables and determined that it was bound by the legal presumption as to correctness of these capital values regardless of whether the capital values had been independently assessed or had been appealed or the comparables had been sold. Accordingly the Appellant was required to rebut the presumption of correctness of the capital values of the Respondent’s comparables and demonstrate to the Tribunal that they were not correct. The Tribunal unanimously determined that the Appellant had failed to provide any such evidence and dismissed the Appeal by the Appellant against the Decision of the Respondent in respect of the assessment of the capital value of the Property.



GARRETT E. O’ REILLY
Legal Chairman
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: