

**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: 24/08**

**JONATHAN WHITE - APPELLANT**  
**AND**  
**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr James V Leonard, President**

**Members: Mr Brian Sparkes FRICS and Mr Pat Cumiskey**

**Hearing: 17 September 2010, Belfast**

## **DECISION**

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

### **REASONS**

#### **Introduction**

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant had requested, at the time the appeal was instituted, that his appeal should be dealt with by oral hearing. The appellant was duly and properly notified by notice in writing dated 10 August 2010 of the listing of the matter for hearing on 17 September 2010. However, the appellant did not

appear at hearing. The respondent at hearing was represented by Mr Martin McGrath together with Ms Deirdre Shiels MRICS.

2. At the outset of the hearing it was drawn to the attention of the respondent's representatives that the appellant had requested an adjournment of the matter. The respondent's side strenuously objected to the matter being adjourned. The respondent's objection was grounded upon the submission, firstly, that the appeal had been instituted a rather considerable time ago and had been ongoing for a lengthy period, secondly, that every request for documentation and information on the appellant's part directed to the respondent had been fully and properly complied with by the respondent and all information and documentation had been provided to the appellant, and thirdly, that no proper and substantive grounds had been made out by the appellant to cause the matter to be further delayed on account of the case being further adjourned.
3. In regard to the appellant's request for information and documentation, Mr McGrath for the respondent submitted that the initial request for information had been received in 2009 and had been fully dealt with by the respondent a short time after the request had been received. Some more generalised queries were received from the appellant and thereafter had been addressed by referring the appellant to the appropriate information available from the Land and Property Services website. In addition, certain specific information had been provided regarding particularised properties. Following on from this, the appellant had made additional requests and indeed additional information had been provided to him, notwithstanding that the respondent had some difficulty in comprehending the manner in which the requested information might be seen to assist in the appellant's appeal, given the statutory tests applicable. For the respondent, Mr McGrath suggested that a considerable part of the reason for the delay on the appellant's part in progressing the appeal might possibly have been that the appellant was awaiting the outcome of an appeal matter which related to a neighbouring property. None of the information recently requested had any direct bearing upon the appellant's capital value nor upon the issues in his appeal. Notwithstanding the difficulty and the time taken to compile this information, it had been provided by the respondent to the appellant in as comprehensive a form as possible.

4. The tribunal, in determining whether the matter ought properly to be adjourned, noted the lengthy history of the matter which had commenced with an appeal dated 6 September 2008 from a Commission's Decision on Appeal dated 5 August 2008. The matter had been postponed on a number of occasions at the appellant's request. There seems to have been some divergence of view as between the appellant and the respondent concerning who was responsible for provision of information and for the considerable delay in the matter, with the appellant stating that this was entirely the responsibility of the respondent and the respondent stating that the delay was substantially the appellant's responsibility. Leaving aside these matters of dispute, materially and of most significance to the tribunal, the appellant appears to have been quite content for a hearing of the case to proceed in June of this year. This is apparent for the reason that the appellant readily agreed to the listing of the hearing in June 2010 and the hearing indeed had commenced on 25 June 2010, listed before a differently-constituted tribunal panel. No application had been made to adjourn that June hearing at the outset on the appellant's part, whether on account of the case not being in a proper state of preparation or needing additional evidence or material, or indeed on account of any other cause. However, that hearing was aborted and the matter was adjourned on that date at the tribunal's own motion.
  
5. The case now comes before this differently-constituted tribunal. The various communications by e-mail and by letter between the office of the tribunal and the appellant and also the office of the respondent are noted, as are the directions made by the tribunal regarding the management of the case with a view properly to progressing the case to a hearing and disposal, with recent case management commencing in June 2010 with a view to listing of the matter in August 2010. In these matters the tribunal is guided by the tribunal's Rules of Procedure ("the Rules") which are set forth in the Valuation Tribunal Rules (Northern Ireland) 2007 (as amended). The Rules mention the so-called "overriding objective" which is at Rule 3. The overriding objective is of fundamental significance to proceedings of the tribunal and that objective is designed to promote the tribunal's dealing with cases fairly and justly. Importantly, this includes the objective of dealing with cases in ways which are proportionate to the complexity of the issues and to the resources of the parties and, further, the objective of avoiding delay, so far as compatible with the proper consideration of the issues. In view of the background to and the history of the

matter, the content of the recent communications, and the directions made by the tribunal in order to progress the case, notwithstanding the fact that the appellant did not appear at hearing, the tribunal determined that the proper course was not further to adjourn the matter. Thus the fair and proper course was to proceed with the hearing and the reaching of a determination and a proper disposal of the case. In reaching that determination, the tribunal noted that there was no evidence of any matter which would have properly prevented the appellant from being in attendance and in a position to be personally present or represented at the hearing, as listed upon due notice.

6. The appellant, by Notice of Appeal dated 6 September 2008, appealed against the decision of the Commissioner of Valuation on appeal dated 5 August 2008 in respect of the valuation of a hereditament situated at 23C Tobergill Road, Templepatrick, Ballyclare, County Antrim BT 39 0DT (“ the subject property”).

### **The Law**

7. 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, as these provisions have been fully set out in earlier decisions of this tribunal. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in the matter.

### **The Evidence and Facts**

8. The tribunal noted the written evidence and submissions. The tribunal had before it the appellant’s Notice of Appeal to the tribunal (Form 3) and various documents including the following:-

8.1 The Commissioner’s Decision on Appeal dated 5 August 2008.

8.2 A document entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Ms Deirdre Shiels MRICS and submitted to the tribunal for the purposes of the tribunal hearing.

8.3 Various documents and written communications submitted in evidence and by way of argument on behalf of the appellant to the tribunal.

8.4 Various documents and schedules of listed property values prepared by the respondent in response to requests for information on the part of the appellant.

8.5 Correspondence including e-mails between the tribunal and the parties.

9. The following facts were not in contention. The subject property consists of a dwellinghouse situated at number 23C Tobergill Road, Templepatrick, Ballyclare, County Antrim BT39 0DT, that being situated in a rural location about four miles north east of Antrim town. The appellant is understood to be the ratepayer. The subject property is a detached two-storey house with construction completed in or about 2007, with a gross external area ("GEA") of 446 m<sup>2</sup>. The subject property has a detached double garage of GEA 70m<sup>2</sup> and is of brick and tile construction and has the benefit of oil-fired central heating, mains electricity and water, with sewerage services to a septic tank. On the ground floor are two reception rooms, kitchen, utility room, cloakroom, bedroom and shower room. On the first floor are four bedrooms (one with ensuite) and a bathroom. The capital value was entered into the valuation list in January of 2008 at £450,000. The valuation was subsequently reduced by the Commissioner's Decision on Appeal dated 5 August 2008 to £420,000. These values are of course notionally assessed as at 1 January 2005 (that being the antecedent valuation date, or "AVD") for the purposes of the statutory domestic rating scheme.
10. The Commissioner's submission, as respondent, to the tribunal is that, in arriving at the capital value assessment of the subject property, regard was had to the statutory basis of valuation; 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. However, the size and character of the subject property were such that the respondent had of necessity to extend the search for reasonable comparisons across a wider area (than would sometimes be the case). It is contended that the “comparables”, set out in a schedule to the Commissioner’s Presentation of Evidence, are all similarly circumstanced to the subject property and that these provide the best evidence of value. It is stated that none of the comparables have challenged their assessments. It is noted that direct sales evidence has been put forward by the respondent to the tribunal in regard to three of the listed comparables, as identified below. In the Presentation of Evidence there are seven comparables in total including the subject property. The comparables are located over a relatively wide geographical area and most are not situated in close proximity one to the other in terms of location. The respondent’s listed comparables in addition to the subject property are, firstly, number 21A Ballywee Road, Ballyclare (sales evidence mentioned), secondly, number 7 Crosskeenan Road, Rathmore, Antrim (sales evidence mentioned), thirdly, number 24 Tobergill Road, Antrim (sales evidence mentioned), fourthly, number 26 Lower Rashee Road, Ballyclare, fifthly, 21 Old Ballyclare Road, Antrim, and sixthly, 126 Parkgate Road, Antrim, all County Antrim. Copies of the Commissioner’s Presentation of Evidence and of the other documentation have been provided to the appellant and the appellant has responded thereto in submissions to the tribunal.

## **THE SUBMISSIONS**

11. The respondent has included the following points in submissions. The respondent's contention is that the best available sales evidence for the subject property is number 24 Tobergill Road, situated on the laneway opposite. That property is of 478m<sup>2</sup> and is in a similar location and is now finished to a high standard. That property, which was being built during 2004/2005, was placed on the market at £650,000 in November of 2004. The sale was completed in November 2005 at £448,000, which is understood to be a price reflecting a builder’s finish. It is further contended that the sale of number 21A Ballywee Road, a property of 425m<sup>2</sup>, at a figure of £410,000, also completed in November 2005 and is understood to reflect a builder’s finish. These are contended on behalf of the respondent to indicate the level of the market for this size and type of property as at AVD. Further to that, it is

contended that the sale of number 7 Crosskeenan Road, a property of 389m<sup>2</sup>, at a figure of £410,000, which completed in August 2004, further indicates market levels for this locality and property type. The respective capital value assessments of numbers 26 Lower Rashee Road, 21 Old Ballyclare Road and 126 Parkgate, are of equally large houses and also support the subject property's assessment as being reasonable, so it is submitted on behalf of the respondent. The respective capital value assessments in respect of the foregoing comparables were uncontested and were as follows:-

21A Ballywee Road, Ballyclare - £400,000

7 Crosskeenan Road, Rathmore, Antrim - £400,000

24 Tobergill Road, Antrim - £575,000 (not contested but listed for review following the appeal in respect of the subject property)

26 Lower Rashee Road, Ballyclare - £450,000

21 Old Ballyclare Road, Antrim - £425,000

126 Parkgate Road, Antrim - £460,000

12. The appellant has made a number of submissions and contentions in the context of his appeal. The appellant has alluded in his application to a Chartered Surveyor's report but that has not been placed in evidence before the tribunal. The same can be said regard the stated data available on house prices. As mentioned, the appellant has sought on a number of occasions clarification of information from the respondent and the appellant has also made requests for specific information from the respondent. Further, the appellant has addressed the office of the tribunal directly in seeking clarification of the law in a number of respects. Dealing with that latter issue, this tribunal would wish to clarify, for the avoidance of doubt, that it is not the function of the tribunal nor of the secretary to the tribunal to provide detailed and specific legal advice to any participant in advance of or in the course of proceedings. Whilst one of the functions of the tribunal as specified in the Rules is to assist any party in the presentation of his case, it is not the function of the tribunal to advocate the course he should take. The tribunal, in the course of any hearing, shall entertain any particular material submission and shall reach any relevant adjudication upon matters of fact and law. Any decisions and determinations of the tribunal shall serve to clarify particular aspects of the law pertinent to any area of jurisdiction of the tribunal.

13. The appellant's general contention is that the valuation in respect of the subject property is not fair and reasonable in accordance with the Commissioner's Decision on Appeal. The appellant in his appeal states that he has made comparisons with properties in the locality and that he has a valuation by a Chartered Surveyor. Taking account of data available on house prices, gives him a valuation of circa £330,000. He contends that clearly there are inaccuracies in the valuation process as his initial valuation had been reduced by over 6%. He states that he is aware of other properties nearly having been reduced by circa 17%. The properties specifically mentioned in comparison by the appellant in the course of a series of communications are the properties at numbers 15 Tobergill Road, 23E Tobergill Road and (latterly) 109A Kilgad Road, Kells, Ballymena BT42 3EE. In these communications the appellant has queried the justification for the increase in capital value in respect of 15 Tobergill Road and the reason for the substantial reduction in capital value in respect of 23E Tobergill Road. Whilst identifying these particular properties, the appellant has not sought in any detailed or express manner to rank these properties in terms of similarity of circumstances to the subject property nor to distinguish these from the respondent's selected comparables in any detailed fashion by way of challenge to the respondent's evidence.
  
14. In response to these contentions, the respondent has dealt with the explanation for the reduction in the capital value in regard to 23E Tobergill Road, stating that the amended valuation at £490,000 is in line with the additional evidence, as explained in a file note that has been provided by the respondent to the appellant, and consequent upon appeal where the Commissioner's decision was upheld. In regard to the increase in 15 Tobergill Road, the respondent has put forward the explanation that the initial assessment was identified as being too low on account of the operation of the statutory provisions applicable. That property was identified as being "out of tone" and thus the valuation was amended and that had been unchallenged. The enquiry in respect of 109A Kilgad Road, Kells was one made a relatively short time before the hearing and not included in the appellant's earlier written requests. The respondent's response to this enquiry has been to include details of that property upon which the capital value has been assessed, together with the comment that this property came into the valuation list after the appeal process, has not the same characteristics as the subject property, is located in different market

location and is substantially smaller than the subject property and is therefore not considered to be the best comparison.

## **THE TRIBUNAL'S DECISION**

15. 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 has been assessed at AVD (consequent upon the Commissioner's Decision on Appeal) at a figure of £420,000. On behalf of the Commissioner it has been contended that that figure is fair and reasonable in comparison to other properties; 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. The appellant's contentions are as outlined above and the appellant contends that the proper valuation should be £330,000.
16. 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.
17. 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.
18. The Commissioner's Statement of Case as set out in the Presentation of Evidence and the schedule of comparables was challenged by the appellant in the manner mentioned above and, generally, both as to the appropriateness of the comparables and also as to the conclusions properly to be derived from the comparisons.
19. 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.

20. The arguments made by the appellant have been summarised above. In this case, as in all such cases, the statutory provisions state 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 property. The tribunal thus gave full consideration to all of the evidence and argument including the analysis of the appropriateness of selection and the weight to be attached to the various properties put forward as comparables both by the respondent and also by the appellant, insofar as these related to the statutory basis of valuation.
  
21. The appellant's general contention that the respondent's selected comparables were inappropriate or were not well chosen does not persuade the tribunal as much as the contrary argument from the respondent. This is so for the reason that, in addition to the unchallenged capital values there is evidence of sales values in respect of three comparables. These sales are respectively recorded at dates relatively close to AVD as is mentioned in paragraph 11 above. The tribunal without difficulty, examining this evidence, accepts the respondent's contentions as set forth in paragraph 11. It is noted that the appellant has not put forward any persuasive argument to challenge the rather strong evidence of capital value emerging from these property sales. The uncontroverted evidence is that number 24 Tobergill Road, situated in close proximity to the subject property, is of 478m<sup>2</sup> (with a double garage of 89m<sup>2</sup> and stable block of 58m<sup>2</sup>) and finished to a high standard. That property was sold in November 2005 for £448,000. The assessed capital value attributed was indeed £575,000 and that was not contested (quite possibly by reason of the Rates (Maximum Capital Value) (Amendment) Regulations (Northern Ireland) 2009 which imposed a statutory "cap" of £400,000). However, that case was listed for review following the subject appeal. Number 21A Ballywee Road, a property of 425m<sup>2</sup> (with a double garage of 45m<sup>2</sup>), was sold for £410,000 in November 2005 and has an unchallenged capital value of £400,000. Number 7 Crosskeenan Road, a property of 389m<sup>2</sup> (with a double garage of 57m<sup>2</sup>), was sold in August 2004 for £410,000 and

has an unchallenged capital value of £400,000. The other details provided in the respondent's evidence have been noted to set these foregoing figures in context. Further to this, the unchallenged capital values of the properties detailed are acceptable evidence of the state of valuation in respect of comparable properties, taking into account the statutory considerations which must apply in these matters.

22. Taking the evidence as presented to the tribunal, weighing this as to value and appropriateness, and noting the arguments and submissions, the tribunal's conclusion is that the appellant has not placed before the tribunal sufficient evidence, information and argument to enable the statutory presumption of correctness in respect of the capital value assessment to be displaced. The tribunal concludes that the Commissioner's assessment of capital value in respect of the subject property at a figure of £420,000 is not self-evidently or manifestly incorrect. Examining the evidence of the comparable properties and the other evidence and arguments put forward, the tribunal on balance sees nothing of sufficient weight to displace the statutory presumption of correctness in respect of the Commissioner's capital value assessment.
23. The foregoing being the case, the appeal cannot succeed. The Commissioner's Decision on Appeal is upheld and accordingly the appeal is dismissed.

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

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