

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

APPLICATION FOR REVIEW UNDER RULE 21 OF THE VALUATION
TRIBUNAL RULES (NORTHERN IRELAND) 2007 (AS AMENDED)

CASE REFERENCE NUMBER: 24/08

MR JONATHAN WHITE - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND-
RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 14th January 2011

Chair: Ms Anne Grimes

Members: Mr David McKinney and Mr Garry McKenna

DECISION AND REASONS

The Application

1. This is an application by the appellant for a review under Rule 21 of the Valuation Tribunal Rules (Northern Ireland) 2007 (as amended) (the Rules). The appellant sought a review of the decision of the Tribunal dated 29th September 2010 following a hearing on 17th September 2010 (the decision).
2. The decision related to an appeal by the appellant under Article 54 of the Rates (Northern Ireland) Order 1977 (as amended) against the decision of the Commissioner for Valuation in respect of the valuation of a property situated at 23C Tobergill Road, Templepatrick, Ballyclare, County Antrim BT39 0DT.
3. The Tribunal decided that it was not practicable for the decision to be reviewed by the panel which made the decision and a different panel heard the review under Rule 21 (5).

The Hearing

4. Each party had been notified of the time and place of the hearing and each had notified the Tribunal that they would not attend. The panel considered the application on the basis of the papers.
5. The panel had the following documents:
 - correspondence between the parties and the Tribunal;
 - the Notice of Appeal;
 - the respondent's presentation of evidence bundle;
 - decision of the Tribunal dated 29th September 2010.

The Background

6. On 9th September 2008 the appellant appealed to the NIVT against the decision by the respondent in relation to the capital valuation of his property at 23C Tobergill Road. There followed a number of adjournments of hearing dates for a number of reasons. The appeal was listed for hearing on 17th September 2010. This review application relates to that hearing and the subsequent decision.
7. The Notice of Hearing in relation to 17th September 2010 was served on the parties on 10th August 2010. The appellant contacted the Tribunal on 10th August 2010 by email in relation to the proposed hearing on 17th September. In his email of 10th August 2010 (12.16) the appellant said that he would not be able to attend due to ill health. In his email of 10th August 2010 (14.02) he said that he needed further time to review his case and that he would be out of the country for some weeks. The appellant's emails were treated as an application for an adjournment and this was refused by letter from the Tribunal dated 3rd September 2010.
8. It appears that around this time the appellant requested information and documentation from the respondent to which the respondent replied via the Tribunal on 9th September 2010. In this letter the respondent provided some of the information requested by the appellant but refused to provide the appellant's request for details of property valuations for the whole of Northern Ireland for properties in the range of 360m² to 450m². The reason given by the respondent for the decision not to provide this information was that the request has strayed into the realm of commercial sensitivity. It was pointed out to the appellant by the respondent that he could check valuations of properties on the Land and Property Service website.
9. In his email of 10th September 2010 (10.35) the appellant said that he would not be available on the date of the hearing and was still awaiting disclosure from the respondent.

10. On 13th September 2010 the respondent sent details of property valuations for all of Northern Ireland for properties in the range of 360m² to 450m² to the Tribunal. This was received by the Tribunal on 14th January 2010 and a copy forwarded to the appellant by the Tribunal on that date. It was received by the appellant on 15th September 2010.
11. On 15th September 2010 (11.59) the appellant emailed the Tribunal to say that he was not in a position to attend the hearing as he had not yet received the information provided by the respondent. He also said that he awaited a response from the NIVT on the legal issues he had raised. He said that he required clarification on these issues and time to prepare the case. It appears that he subsequently received the information and later that day at 13.05 the appellant emailed the Tribunal to say that the respondent had failed to provide all the information he had requested in that they had failed to explain the basis on which properties at 23E Tobergill Road and 15 Tobergill Road had been revalued.
12. On 17th September the appellant did not appear at the hearing. The Tribunal first considered the appellant's request to adjourn the hearing. The Tribunal took account of the lengthy history of the matter which had been ongoing since the appeal was lodged on 6th September 2008 and the fact that the hearing had been postponed on a number of previous occasions. The Tribunal attached weight to the 'overriding objective' set out in Rule 3 of the Rules. The Tribunal decided to proceed to hear the appeal in the absence of the appellant. For the reasons set out in the Tribunal's decision the appeal was dismissed.
13. On 1st October 2010 (14.05) the appellant requested a review of the decision. He said that he had additional new evidence in the form of the information provided by the respondent. He said that the review was required in the interests of justice. On 13th January 2011 (12.32) the appellant emailed to say that he expected the decision to be overturned as he was not in attendance at the hearing on 17th September and that he had not yet had a meaningful explanation from the respondent as to why the valuations for properties at 23E and 15 Tobergill Road had been amended to such an extent.

The Law

14. Rule 21 of the Rules governs applications for review. It states as follows;

- 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.

(2) An application for the purposes of paragraph (1)—
(a) may be made immediately following the decision at a hearing; or
(b) if not so made, shall be delivered to the Secretary within 14 days of receipt by the party making the application of written notice of the decision, and shall be in writing stating the reasons in full.

(3) Where the Valuation Tribunal proposes to review a decision on its own initiative, the Secretary shall send notice of that proposal to the parties.

(4) The parties shall have an opportunity to be heard on any application or proposal for review under this rule.

(5) The relevant decision shall be reviewed by the tribunal which made the decision or, where it is not practicable for it to be reviewed by that tribunal, by a different tribunal.

(6) Following review of a decision the Valuation Tribunal may—
(a) vary or set aside the decision;
(b) vary or revoke any order made in consequence of that decision; and
(c) where a decision is set aside, may order a rehearing before either the same or a different tribunal.

(7) On the variation or setting aside of a decision, or the variation or revocation of an order of the Valuation Tribunal, the Secretary shall immediately make such correction as may be necessary in the register and shall send a copy of the entry so corrected to the parties.

(8) In this rule “decision” means a decision which is a final determination of the proceedings.

Findings

15. Rule 21 (1) gives the Tribunal the power to review a decision only where it is satisfied that one of the grounds set out Rule 21 (1) (a) – (d) applies. The panel considered each sub-paragraph in turn.

16. The panel considered Rule 21 (1) (a). The panel had to be satisfied that the decision was wrong because of an error on the part of the Valuation Tribunal or its staff. No allegation was made by the appellant that this ground applies. However the panel considered the decision and was satisfied that there was

17. The panel considered Rule 21 (1) (b). In considering this ground the panel had to be satisfied that 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. The appellant was not present at the hearing on 17th September 2010. The panel considered his reasons for failing to attend. The appellant's email correspondence of 10th August was treated as an application for adjournment which was refused and notified to the appellant by way of letter dated 3rd September 2010. The appellant communicated with the Tribunal further on 10th and 15th September 2010 and said that was still awaiting information from the respondent.
18. It is arguable that the appellant may have had grounds for making an adjournment application following receipt on 15th September of the 19 page list of properties provided by the respondent. However he did not make any written or oral application for an adjournment at this stage or on those grounds. It was open to him to attend the hearing and put forward any reasons why he felt the hearing should have been adjourned. It would still have been open to him to review or appeal any decision made by the Tribunal had the hearing gone ahead. The panel was of the view that the appellant failed to engage with the appeal process by failing to attend the hearing on 17th September. The panel was not satisfied that the appellant had put forward a good reason for failing to be present or represented at the hearing on 17th September.
19. The panel considered Rule 21 (1) (c). The panel had to be satisfied that 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. The evidence referred to by the appellant in his email of 1st October 2010 (14.05) was the information provided by the respondent to the Tribunal on 13th September. The panel was satisfied that this evidence was available before the proceedings and is not therefore new evidence within the terms of Rule 21 (1) (c).
20. The panel considered Rule 21 (1) (d). The panel had to be satisfied that otherwise the interests of justice require that the decision is reviewed. The panel considered all of the circumstances relating to the hearing on 17th September. In the letter of 9th September 2010 the respondent refused to provide the information requested by the appellant relating to details of property valuations for the whole of Northern Ireland for properties in the range of 360m² to 450m² as the request has strayed into the realm of commercial sensitivity. However the respondent then went on to provide the requested information on 13th September. It is unclear why the respondent decided to provide the information having already refused to do so. It is

21. Given the findings the panel was of the opinion that the only appropriate course of action was to set aside the decision and order a rehearing.
22. The panel had a number of concerns about the way in which the parties have communicated with each other in this case. The panel was of the opinion that the parties should communicate directly with each other in relation to requests for information and the provision of information or decisions to refuse to provide information. There is no role for the Tribunal to act as intermediary in such communications except where it is necessary or desirable to make an interim order under Rule 9. The panel felt that the failure to communicate directly had led to some misunderstandings as to what could be requested or provided and delays in providing information.
23. The parties should be aware that they have an obligation to comply with any orders or directions. In particular the parties must comply with the directions for the rehearing and file with the Tribunal any documents to be relied on at the hearing and must copy those to the other party.
24. The panel wishes to ensure that the appeal is dealt with in accordance with the overriding objective set out in Rule 3. The panel therefore requests that the parties ensure at an early stage that they have sought and obtained from each other or from any other source the information and documentation upon which they seek to rely at the rehearing. In particular the panel requests that where information is to be supplied it is done so directly and speedily and, where information is not to be supplied, a clear reason for this is given.

Decision

The decision of 29th September 2010 is hereby set aside and a rehearing is ordered.

**Ms Anne Grimes, Chair
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: *25 January 2011*