

# NORTHERN IRELAND VALUATION TRIBUNAL

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

Case Reference Number: 8/10

KENNETH STEWART and ANNE STEWART– Appellant

and

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – Respondent

Chairman: Garrett E. O' Reilly  
Member: Ms Siobhan Corr MRICS  
Date of hearing: 04 October 2010

## **Hearing**

1. This Hearing was an appeal by the Appellant against the Respondent's Decision to amend the capital value of property at 63, Ballygrainey Road, Ballygrainey, Holywood, BT18 0HE (the Property).

## **Background to the Hearing**

1. The Property was assessed at £425,000.00 as being its capital value at the 1 January 2005.
2. The Appellant subsequently applied to the District Valuer to revise this capital value and the District Valuer altered it to £395,000.00.
3. The Appellant then appealed against this capital valuation of £395,000.00 and on appeal the Respondent amended the Valuation List entry in respect of the Property to a capital value of £385,000.00.
5. The Appellant duly served a Notice of Appeal against the capital value of £385,000.00 on the Northern Ireland Valuation Tribunal under Article 54 of the Rates (Northern Ireland) Order 1977 (as amended by the Rates (Amendment) Order 2006) (the 1977 Order).

## **The Hearing**

1. The Hearing was conducted in accordance with the Valuation Tribunal Rules (Northern Ireland) 2007 (the Rules).

2. Article 4 of the Rules provide that the Tribunal shall comprise three Members of the Valuation Tribunal but with the consent of the parties this Hearing was determined by a Legal Member and a Member with experience in the valuation of property.

3. The Legal Member had given prior written notice to the Tribunal of a possible perception of conflict of interest issue but the parties had given prior written notice to the Tribunal that they did not have any objection to and approved of the Legal Member hearing the appeal.

4. The Appellant furnished a Presentation of Evidence (the Appellant's Presentation) to the Tribunal one working day prior to the Hearing. The parties agreed to proceed with the Hearing on the basis that the Respondent would be given the opportunity to respond in writing within fourteen days from the Hearing to the Tribunal (if he considered necessary so to do) for the purpose of responding to issues raised in the Appellant's Presentation and to which the Respondent could not reasonably have been expected to respond on the day of the Hearing.

5. The Appellant's Presentation contended that the capital value of the Property should be £300,000.00.

6. The Appellant appeared in person and gave evidence to supplement and clarify their Presentation.

7. The Respondent was represented by Mr. McLearnon MRICS and Mr. Spence, MRICS, Dip Rat, District Valuer.

### **Documents before the Tribunal**

1. The Respondent's Decision dated the 23 March 2010 to amend the Valuation List entry in respect of the capital value of the Property.

2. The Appellant's Notice of Appeal against the Commissioner's Decision date stamped as received by the Tribunal on the 29 April 2010.

3. The Respondent's Presentation of Evidence dated the 11 August 2010 prepared by Mr. McLearnon with details of comparable properties attached thereto (the Respondent's Presentation).

4. The Appellant's Presentation date stamped as received by the Tribunal on the 30 September 2010 with various supporting attachments thereto.

5. The Respondent's Supplemental Comments dated the 13 October 2010.

6. The Appellant's undated Response to the Respondent's Supplemental Comments.

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## **Appellant's Submission and Evidence**

### 1. In the Notice of Appeal the Appellant

- said they believe the capital value of the Property should be £300,000.00;
- estimated the maximum market value of the Property at July 2009 to be £350,000.00;
- showed that the property was valued by a RICS Surveyor at £300,000.00 in May 2009;
- said that use of a Housing Price Index suggests that the maximum capital value of the Property at 1 January 2005 is less than £300,000.00; and
- said that comparable properties used by the Respondent in assessing the capital value are not appropriate.

### 2. In the Appellant's Presentation the Appellant elaborated on points in the Notice of Appeal

- they provided documentation showing that the Property was advertised for sale in February 2009 on the open market by Templeton Robinson Estate Agents at a price of £425,000.00.
- they provided a Valuation of a Surveyor appointed on behalf of the Woolwich Mortgages valuing the Property in May 2009 at £300,000.00.
- they advised that the Property was sold in July 2009 for £300,000.00;
- they restated that they considered the sale price of the Property on the open market in July 2009 would have been (at most) £350,000.00;
- provided statistics that the use of historical property prices as shown in the Northern Ireland Property Quarterly House Price Index prepared by the University of Ulster showed that a property with a market value of £350,000.00 in 2009 would have had a capital value of either £258,619.00 or £304,458.00 on the 1 January 2005 (depending on whether the Property was regarded as a house or a bungalow);
- they submitted that the use of comparables was inappropriate in a valuation of the Property because none of the properties specified by the Respondent as being comparables are comparable. In respect of the Respondent's comparable at 72, Whinney Hill they made various observations and concluded that the tone of its extensions renders it as not comparable to the Property; and
- they submitted as an appropriate comparable a property at Sloe Cottage, 42, Hollywood Road, Newtownards (Sloe Cottage) and said that this supported a £265,000.00 capital value for the Property on the basis of tone, construction, extension, number of rooms and size of plot.

### 3. In the Appellant's Response to the Respondent's Supplemental Comments

- they made the case for, and referred to Tribunal cases in support of, the use of house price indexing in assessing property values and they again criticised the Respondent's comparables.

### 4. In the Appellant's oral evidence the Appellant gave evidence that

- they agreed that the comparable method of valuation is a recognised property valuation technique;

- they were the purchasers of the Property in July 2009 in a family transaction; and
- in their opinion the Property needed about £50,000.00 of expenditure to put it into a good state of repair.

### **Summary of Appellant's Evidence**

The Appellant submitted that

- the Respondent's comparables are not appropriate properties on which to base a capital value of the Property but if a comparable is used then they offer a more appropriate comparable which supports a capital value of very substantially less than £385,000.00; and
- the evidence of the 2009 value of the Property based on a House Price Index calculation between 2009 and 2005 indicates that the capital value of the Property must be substantially less than £385,000.00.

### **Respondents Submissions**

1. In the Respondent's Presentation Mr. Mc Learnon submitted that

- he assessed the capital value of the Property as £385,000.00 in accordance with the statutory conditions of what the Property might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the 1 January 2005 on the legislative assumptions. In making his assessment he had regard to the valuation list of capital values of other comparable properties in the same state and circumstances as the Property; and
- there were no identical comparables to the Property but he listed three comparables of similar age and character with a 1.5 km. radius which he used in his assessment. One of the comparables was sold on the 5 January 2005 for £400,000.00.

Mr. McLearnon did not make any attempt to use any mechanism to assess a capital value of the Property other than having regard to the valuation list.

2. In the Respondent's Supplemental Comments Mr. Mc Learnon said that

- the use of the Appellant's 2009 sale information is inappropriate and the methodology of indexing is inappropriate in the assessment of the capital value of the Property. He refers to Tribunal decisions, which confirm this submission that all three comparables are appropriate having regard to their capital values in the valuation list and in accordance with the legislation;
- all three comparables are pre First World War properties which have been extended, are very similar, in close proximity and are representative of the established tone within the rural hinterland of the Holywood home-owning locality and accordingly they are proper comparables in an assessment of the capital value of the Property; and

- the Sloe Cottage comparable suggested by the Appellant is not considered appropriate as it is much smaller than the Property and in a different location and market area and close to three active quarries situate 3.74 kms. from the Property.

### **Summary of the Respondent's Submissions**

The Respondent contended that the proper and legal basis for assessing a capital value in this appeal is by reference to the capital values in the valuation list of comparables as specified in the legislation.

### **Legislation relevant to assessing the capital value of the Property in this appeal**

The Evidence indicated that the parties did not have the same understanding and interpretation of the legislation governing the assessment of capital values. For the assistance of the parties the legislation involved in this Hearing is set out in the Schedule to this Decision.

For the purpose of this appeal, to paraphrase the legislation, the capital value of the Property is the open market value of the Property expected by a willing seller in a sale on the 1 January 2005 assessed on various presumptions and having regard to other comparable properties in the same state and circumstances.

Further in this appeal it was for the Appellant to rebut a presumption that the capital value of the Property assessed by the Respondent and detailed in the valuation list is not correct.

### **Consideration of the Evidence**

The Tribunal took the view that the first issue to be considered was the issue of compliance by the Respondent with the legislation in assessing the capital value of the Property. The Tribunal accepted that there were no identical comparables and understood that this capital value assessment was very difficult. However the Tribunal was absolutely satisfied that all of the Respondent's comparables were appropriate and supported a capital value of £385,000.00 for the Property having regard to their age, location and physical attributes and in the case of the comparable property at 72, Whinney Hill to its sale on the 4 January 2005 for £400,000.00.

Accordingly the Tribunal then turned to the question as to whether the Appellant had established to the satisfaction of the Tribunal that the capital value of the Property in the valuation list was not correct and by their evidence they had rebutted the statutory presumption of its correctness.

In relation to the Sloe Cottage comparable suggested by the Appellant the Tribunal agreed that there were no grounds for considering it as comparable to the Property

and the statutory presumption of the correctness was not rebutted by this comparable.

In relation to the use of comparables as being the mode of assessment of a capital value the Tribunal noted that the wording of the legislation is “regard shall be had to the capital values in that valuation list of comparable hereditaments.....” The Tribunal also noted that the legislation does not say regard shall **ONLY** be had to.... and it does **NOT** specifically exclude regard being had to other rationale in assessing a capital value. The Tribunal considered that if there is other evidence helpful in assessing a capital value then there is no legislative reason why some regard should not be had to that evidence. Indeed the Tribunal envisaged that in some exceptional circumstances the Tribunal might also have regard to some other evidence of value in estimating a capital value. In short the Tribunal does not accept the Respondent’s apparent view that he is restricted to only having regard to the capital values in the valuation list.

The cases of Lockington v COV- Case No. 21/08; Payling v COV- Case No. 23/08; and Haire v COV Case No. 30/08 are referred to by both the Appellant and the Respondent. Both parties claim these decisions support their views as to the validity of Indices in the assessment of values. This Tribunal’s view is that if other evidence (such as indexing) in an appeal seemed to be very strong and in total contradiction to a capital value in a valuation list then it may be possible to use this evidence to rebut the presumption of correctness of the assessment of the Respondent’s capital value and that such a view is not inconsistent with these cases.

Further in the case of Liggett v COV- Case No.1/08 the presumption of correctness was interpreted by the Tribunal as being rebutted in the circumstance that “the Commissioner’s decision be self-evidently so manifestly incorrect that the tribunal must amend the valuation”. It could be reasonably envisaged that the evidence of an Index may be used to show that a decision to be manifestly incorrect.

In this appeal the evidence of a Housing Index was that there had been (depending on whether the Property was regarded as a house or a bungalow) either a 15.8% or 13.0% increase in values in the area in which the Property is situate between 1 January 2005 and 2009. Accordingly if the Appellant’s maximum market value of £350,000.00 of the Property in 2009 was correct then the capital value of the Property at the 1 January 2005 would be a maximum of either £294,700.00 or £304,500.00. These capital values are totally inconsistent with the capital value of £385,000.00 of the Property in the valuation list and in this circumstance the Tribunal decided it was appropriate to consider other evidence.

The Appellant’s evidence to validate their £350,000.00 market valuation of the Property in 2009 and relate it back to their capital value of £300,000.00 of the Property on the 1 January 2005 was the sales history of the Property during 2009, the Woolwich Property Valuation of £300,000.00 and the £300,000.00 price paid for the Property by them. The Appellant also gave evidence that they spent £50,000.00 on the Property as it was in a poor condition. This evidence was totally consistent with the Woolwich Survey, which stated that the Property was in poor condition having regard to its age and construction.

The Tribunal also considered the Appellant's documentary evidence of the respected firm of estate agents, namely Templeton Robinson. Templeton Robinson has an office in Holywood and marketed the Property For Sale at £425,000.00. In this regard, the Appellant's oral evidence was that the figure of £425,000.00, as detailed in the sales particulars, was a genuine asking price at February 2009. Templeton Robinson's records show that there was a healthy level of interest in the Property. The Tribunal noted that an offer of £350,000.00 was made by an interested party and later increased to £375,000.00 by that same party even though the Property appeared to have been on the open market for a relatively short period of time during late March and April 2009.

The Tribunal took the view that the Templeton Robinson records were an accurate assessment of the open market conditions at February 2009. Furthermore, the Tribunal must take into account the fact that when the Property was purchased by the Appellant in July 2009 for £300,000.00 that this was a transaction between family members. Such a transaction cannot be treated as an open market arms length transaction. The Tribunal noted that the Woolwich Valuation of £300,000.00 was for the purpose of raising finance and in the Woolwich Survey referred to the transaction as a "private sale between family members" and that "elements of the property are in poor condition...and that works of repair.....are required".

The Tribunal appreciated that valuation is not an exact science and having regard to the evidence decided on the balance of probabilities that the open market value of the Property in early 2009 was not less than £375,000.00 and probably somewhere nearer £425,000.00.

Further the Tribunal noted that there is a statutory assumption when a capital value is being assessed that a property is in an average state of internal repair and fit out having regard to the age and character of the Property and its locality. Taking into account the Applicant's evidence of the need to spend £50,000.00 on the Property to achieve that average status it is logical to increase the market value by anything up to £50,000.00. Using the Appellant's Housing Index submission of a 15.8% or 13% increase in the value of the Property (depending upon whether the Property is a detached house or a bungalow) then a £475,000.00 value would indicate a capital value of £399,950.00 or £413,250.00 and even a value of £425,000.00 would indicate a capital value of £357,850.00 or £369,750.00 for the Property at the 1 January 2005. The Tribunal was absolutely clear that the most favourable interpretation of any of these results for the Appellant could go no way to rebutting the presumption as to the correctness of the Respondent's assessment of capital valuation of the Property. It may be coincidence but none of these capital values is dramatically inconsistent with the capital value of the Property of £385,000.00 currently entered in the valuation list.

The Tribunal was convinced the results demonstrated that indexing at any time and particularly in unstable and volatile market conditions and in a reverting back valuation could be used, at best, to indicate a general property trend and only if those trends were so completely at variance with a capital valuation of a specific property should indexing be considered as a tool to rebut the presumption of the correctness of a valuation list. As it happened in this appeal the Tribunal found a logical interpretation of the result of indexing was that rather than rebut the

presumption of correctness the result could be reasonably interpreted as showing that the Appellant has been very fairly treated by the Respondent in the assessment of £385,000.00 as the capital value of the Property.

### **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 appeal of the Appellant is dismissed.

**GARRETT E. O' REILLY**  
**Legal Chairman**  
**Northern Ireland Valuation Tribunal**

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

### **Schedule**

The assessment of the capital value of a property is governed by Paragraphs 7 to 15 of Part 1 of Schedule 12 to the 1977 Order and Paragraph 7 of Part 1 of Schedule 12 to the 1977 Order (insofar as is material to this Appeal) provides that

(1) Subject to the provisions of this Schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in paragraphs 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.

(2) In estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised.

(3) The assumptions mentioned in paragraphs 9 to 15 shall apply for the purposes of determining whether one hereditament is a comparable hereditament in the same state and circumstances as another with the omission of sub-paragraphs (2) and (3) of paragraph 12.

(4) In sub-paragraph (1) "relevant capital valuation date" means 1st January 2005 or such date as the Department may substitute by order made subject to negative resolution for the purposes of a new capital value list.; and

the assumptions specified in Paragraphs 9 to 15 of Part 1 of Schedule 12 to the 1977 Order provide that

*Capital value – the assumptions*

9. The sale is with vacant possession.

10. The estate sold is the fee simple absolute or, in the case of a flat, a lease for 99 years at a nominal rent.

11. The hereditament is sold free from any rentcharge or other incumbrance.

12. (1) The hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality.

(2) The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

(3) In sub-paragraph (2) "relevant date" means 1st April 2007 or such date as the Department may substitute by order made subject to negative resolution for the purposes of a new capital value list.

13. The hereditament has no development value other than value attributable to permitted development.

14. (1) A hereditament falling (or deemed to fall) within any sub-paragraph of Article 39(1A) will always fall within that sub-paragraph.

(2) A hereditament falling (or deemed to fall) within paragraph (1B) of Article 39 will always fall within that paragraph.

15. (1) There has been no relevant contravention of—

(a) any statutory provision; or

(b) any requirement or obligation, whether arising under a statutory provision, an agreement or otherwise.

(2) In sub-paragraph (1) "relevant contravention" means a contravention which would affect the capital value of the hereditament.

AND by Article 54 of the 1997 Order and Article 54(2) thereof provides that

"on an appeal under Article 54 the valuation shown in the valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown."