

**NORTHERN IRELAND VALUATION TRIBUNAL**

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

**CASE REFERENCE NUMBER: NIVT11/11**

**MR GAVIN CONWAY – APPELLANT**

**AND**

**COMMISSIONER OF VALUATION - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr John Duffy**

**Members: Mr Sandy Moore and Ms Noreen Wright**

**Belfast, 27 October 2011**

**DECISION**

The unanimous decision of the tribunal is that the appeal is allowed and that the Assessed Capital Value shall be decreased by 10% to £247,500.

**REASONS**

**Introduction**

This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended (“the 1977 Order”). There was no appearance before the tribunal by or on behalf of the appellant and the respondent, both parties relying upon representations in writing. In accordance with Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007, an appeal may be disposed of on the basis of written representations if all the parties have given their consent in writing to that course. Consent has been given in this case.

The appellant has appealed against the decision of the Commissioner of Valuation for Northern Ireland (“the Commissioner”) on appeal dated 27 June

2011 in respect of the valuation of a hereditament situated at 38 Causanagh Road Loughgall, Co Armagh BT61 8PR.

### **The Law**

The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). It is perhaps desirable to set out some detail in respect of the statutory provisions applicable to the basis for valuation and the mechanism for appeals to this tribunal in this type of case. Material to the case, Article 8 of the 2006 Order amended Article 39 of the 1977 Order (the basis of valuation) as follows:

**“8.**

—(1) In Article 39 of the principal Order (basis of valuation), for paragraph (1) there shall be substituted the following paragraphs—

“(1)—.

(1A) For the purposes of this Order the following hereditaments shall be valued upon an estimate of their capital value—

(a) any dwelling-house;

(b) any private garage;

(c) any private storage premises.

(1B)-.

(1C)-.

(2) In Part I of Schedule 12 to the principal Order (basis of valuation), after paragraph 6 there shall be inserted the following paragraphs—

*“Capital value — general rule*

**7.** —(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 .....

*Capital value — the assumptions*

**8.** In this paragraph and paragraphs 9 to 15—

“development” has the meaning given by Article 2(2) of the Planning Order;

“flat”, in relation to a building, means a dwelling which is a separate set of premises, whether or not on the same floor, divided horizontally from some other part of the building;

“incumbrance” means any incumbrance, whether capable of being removed by the seller or not, except service charges;

“permitted development” means development for which planning permission is not required or for which no application for planning permission is required;

“Planning Order” means the Planning (Northern Ireland) Order 1991 (NI 11);

“planning permission” has the meaning given by Article 2(2) of the Planning Order;

“rentcharge” has the meaning given by section 27(1) of the Ground Rents Act (Northern Ireland) 2001 (c. 5).

**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 subparagraph of Article 39(1A) will always fall within that subparagraph.

(2) A hereditament falling (or deemed to fall) within paragraph (1 B) 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.”

The 2006 Order also amended the 1977 Order (regarding appeals) as follows:

**“Appeals from the Commissioner .....**

**33.** For Article 54 of the principal Order .... there shall be substituted the following Articles—

**“Appeal from decision of Commissioner**

**54.** —(1) Any person, other than the Department, who is aggrieved by—

(a) the decision of the Commissioner under Article 49A or on an appeal under Article 51; or

(b) an alteration made by the Commissioner in a valuation list in consequence of such a decision,

may appeal to the appropriate Tribunal.

- (2) On an appeal under this Article the Tribunal may—
- (a) make any decision that the Commissioner might have made; and
  - (b) if any alteration in a valuation list is necessary to give effect to the decision, direct that the list be altered accordingly.
- (3) On an appeal under this Article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.
- (4) In this Order “the appropriate Tribunal’ means—
- (a) in relation to such appeals as may be prescribed, the Valuation Tribunal;
  - (b)-.

### **The Evidence**

There was no oral evidence. The tribunal had before it the appellants’ form of appeal to the tribunal (Form 3) and copies of various documents including the following:

1. The Commissioner’s Decision on Appeal dated 27 June 2011.
2. A document entitled “Presentation of Evidence” dated 9 August 2011 prepared on behalf of the Commissioner by Land and Property Services and submitted to the tribunal for the purposes of the tribunal hearing.
3. The appellant’s Notice of Appeal.
4. An email (with attachment photographs) from the appellant dated 27 October 2011.
5. Correspondence between the tribunal and the parties.

### **The Facts**

On the basis of such information as was before it the tribunal determined, upon the balance of probabilities, the following facts:

1. The hereditament is as described in the Presentation of Evidence document referred to above (“the property”). The property is stated to be occupied by the appellant, but the tribunal had no other information regarding title, nor regarding the physical construction and characteristics of the property, save as is mentioned in the papers before the tribunal and referred to below. The appellant is understood to be the ratepayer.
2. The capital value assessment of the property is £275,000 at antecedent valuation date, that being 1 January 2005 (“AVD”). In arriving at that capital value assessment figure regard was had to assessments in the valuation list of properties considered comparable. These comparables are set out in a schedule to the Commissioner’s Statement of Case, with further particulars given thereafter in respect of these comparables, both sales and assessments, including photographs of the comparables. There are four comparables in total. A copy of the Commissioner’s Statement of Case has been provided to the appellant and the appellants have responded thereto in their submission to the tribunal.

### **THE APPELLANTS’ SUBMISSION**

The appellants’ grounds of appeal are as follows:

1. The road the property is situated off, floods in both directions after heavy rain. It can be so extreme at times that it renders the road impassable to ordinary road vehicles.
2. There is an illegal dumping site on the opposite side of the road, where on occasion, illegal waste has been dumped. On at least one occasion animal carcasses have been dumped on the land. The Environmental Health Dept. has been notified on a number of occasions, without a satisfactory result.
3. The heavy vehicles used to deposit the illegal waste have also ruined the Causanagh Road, with potholes and road collapses in certain areas as well as covering the road in mud, causing a hazard in terms of stopping distances.

## **THE TRIBUNAL'S DECISION**

Article 54 of the 1977 Order enables a person to appeal to the tribunal against the decision of the Commissioner on appeal as to capital value. In this case the capital value has been assessed at the AVD at a figure of £275,000. On behalf of the Commissioner it has been contended that that figure is fair and reasonable in comparison to other properties and 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 tribunal must begin its task by taking account of an important statutory presumption contained within the 1977 Order. Article 54(3) of the 1977 Order provides: *“On an appeal under this Article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown”*. It is therefore up to the appellant in any case to challenge and to displace that presumption, or perhaps for the Commissioner's decision on appeal to be seen to be so manifestly incorrect that the tribunal must take steps to rectify the situation.

The Tribunal is satisfied that the correct statutory approach has been followed in this case. We must then consider whether the appellant has adduced sufficient evidence or made sufficient argument to displace the statutory presumption? The arguments made by the appellant have been set out above.

Having considered all the evidence and submissions the Tribunal finds and notes as follows (by reference to the Appellant's numbered Grounds of Appeal):

1. The Tribunal considers that there is some merit to this ground of appeal. It may well be the case that road modifications will have to be carried out in order to cope with the flooding the area. The Tribunal is not impressed by the assertion by Land and Property Services that ‘.....road flooding a few times per year would not present a strong enough case to warrant a reduction’. The reality in this case is that the Appellant's immediate area appears to be particularly susceptible to

flooding from time to time. Indeed this was self evident from the email dated 27 October 2011 and attached photographs provided to us at hearing. It is not sufficient for Land and Property Services to assert that '.....it will be only a matter of time before [the problem] is addressed'. Our conclusion is that the flood risk is such that a reduction of 10% per cent in capital value is appropriate in the particular circumstances of this case. We accept the Appellant's assertion that the comparable properties do not carry the same degree of flood risk.

2. The Tribunal agree with Land and Property Services that although the dumping may be distressing to the Appellant and has been reported to the Environmental Health Dept, the site is not a LEGAL dumping ground and accordingly an illegal use may not be taken into account when applying a capital value.
3. The Tribunal agrees with Land and Property Services that the heavy vehicle use may not be taken into account in this case. Much of that use is related to the illegal dumping site, as to which see Para 1 above.

Accordingly, the Tribunal's unanimous decision is that the Appeal is allowed to the extent that the Capital Value is decreased by 10% to £247,500 and the Commissioner of Valuation shall amend the Valuation List to reflect this Decision.

**Mr John Duffy, Chairman**  
**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties:** *1 December 2011*