

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

CASE REFERENCE NUMBER: 14/09

NADINE LYNCH – APPELLANT

AND

COMMISSIONER OF VALUATION NI – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Michael Ranaghan

**Members: Mr Sandy Moore MRICS and Garry McKenna
Belfast, 29 June 2009**

DECISION

The unanimous decision of the Tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 27 January 2009 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").

By a Notice of Appeal, undated but marked as received at the Tribunals Unit, on 16 February 2009, the Appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland ("the Commissioner") dated 27 January 2009 in respect of the Valuation of a hereditament situated at 11 Carnmoney Road, Eglinton, Co Londonderry, BT47 3JH.

All parties to the Appeal had indicated that they were each content that the Appeal be disposed of on the basis of written representations in accordance with Rule 11 of the Rules and accordingly there was no appearance before the Tribunal by or on behalf of any of the parties.

The Law

2. The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order").

3. The tribunal considered the terms of the Schedule 12 of the 1977 Order as amended which states as follows:

7.-(1) Subject to the provisions of this Schedule, for the purpose 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.

4. Article 54(3) of the 1977 Order provides that, on appeal, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.

The Evidence

5. The Tribunal heard no oral evidence but had before it the Appellant's Notice of Appeal received 27 January 2009 and copies of various documents including the following:

- A document entitled "Presentation of Evidence" submitted on behalf of the Commissioner by Patrick Gallagher of Land and Property Services.
- A letter from the Appellant dated 9 March 2009 attached to which were photographs depicting:
 - i. The boundary between the property under appeal and the grain drying plant,
 - ii. The residue on plants within the Appellant's property
 - iii. The views from the Appellant's property
 - iv. Residue on the Appellants car windscreen

6. The Appellant had also sent a sample of leaves with residue to the Tribunals office. These leaves were not actually examined by the Tribunal but photographs of them were included in the case papers. The Appellant also submitted her Barbeque cover for consideration by the Tribunal. This was examined prior to the Tribunal reaching its decision; it was found that the cover was marked on its surface. Email correspondence between the Tribunal and the Parties was also included in the case papers.

7. All of these documents had been provided to all of the Parties whom had each been given an opportunity to consider and respond to them before being considered by the Tribunal.

The Facts

8. Based on the information before it, the Tribunal determined, upon the balance of probabilities, the following facts:

- The hereditament is a detached bungalow situated at 11 Carnmoney Road, Eglinton (the Subject Property).
- The property has a gross external area of 228m² and comprises a sun room, car port and store and has oil heating.
- The property is situated on an elevated site with views over the Du Pont/Invista factory with the Foyle estuary and the Donegall hills in the background.

9. The Capital Value Assessment of the Subject Property is £180,000. In arriving at the Capital Value Assessment figure regard was had to the assessments in the valuation list of properties considered comparable and also to one market sale of a property in the general locality. These comparables are set out in the Schedule to the "Presentation of Evidence" submitted on behalf on the Commissioner. There are a total of 5 comparables within the locality. Further particulars of the comparables were provided together with photographs of all the comparables. The Capital Value Assessments of the Comparables were all unchallenged.

The Appellant's Submissions

The Appellant's submissions are summarized as follows:

10. The Appellant's property is situated next to a grain drying/dressing business. Throughout the summer and into the autumn clouds of grain residue floated/rained down on her property for most of each day. The Appellant states that neither she nor her family could sit outside and she was unable to work in her garden. The Appellant states that her roof, gutters, windows, car, tarmac and all of her garden were smothered [in residue]. The Appellant states that she had to undertake a clean up operation on her property the bill for which was extensive. (This bill was not submitted in evidence)

11. The Appellant also referred to the continual noise from the drying machines, tractors and the general public who visit the grain drying plant. The Appellant stated that this noise level is considerable, starting at 6am and continuing until dusk, and that often the grain dryers continue into the night. The Appellant referred to a lull in the noise and residue during December and January but states that it is present for the remainder of the year.

12. The Appellant also referred to the view from her property. The Appellant states that she looks straight over the Invista factory which "is ugly all winter".

The Respondent's Submissions

In summary the following submissions were made on behalf of the Commissioner:

13. The Capital Value Assessment of the Subject Property was carried out in accordance with the legislation contained in the 1977 Order and in particular paragraphs 7 and 9-15 inclusive of Schedule 12 of the 1977 Order. In doing so, the requirements in Schedule 12 that "regard shall be had to the Capital Values in the Valuation list of Comparable hereditaments in the same state and circumstances" was duly observed.

14. The Respondent accepted that the Appellant's property is situated next to a grain drying plant. The Respondent inspected the site and reports that on inspection there was continual background noise from the dryer but saw no evidence of dust. At inspection the Respondent saw no evidence of tractors and lorries coming and going from the grain drying business 24 hours a day.

15. In relation to the Appellant's submissions in relation to her view over the Du Pont/Invista factory the Respondent submitted that the factory is approximately 0.5 miles from the Appellants property as the crow flies and that the view of the factory was partially screened by leaves on the day of the inspection.

16. The Respondent accepted that the proximity of the grain drying business would have some impact on the Capital Value of the Appellant's property. The Respondent has produced evidence relating to the Capital Value for comparable properties in the area which are not affected by the negative factor operating on the Appellants property, ie the grain drying business. The comparable properties were:

- 32 Cloghole Road – The Capital Valuation of this property is £190,000. This property is a bungalow with single garage; it is 55m² smaller than the Appellants property.
- 5 Avish Road – The Capital Value of this property is £155,000. This property is a bungalow with a double garage and is described as being in a less convenient location. This property is 57m² smaller than the Appellants property.
- 80 Kilnappy Road – The Capital Value of this property is £190,000. This property is a chalet bungalow with double garage and is described as being in a less convenient location. This property is 23 m² smaller than the Appellants property.
- 20 Donnybrewer Road – The Capital Value of this property is £225,000. This property is a bungalow with a double garage and is 12 m² bigger than the Appellants property.

17. The Respondent then states that having regard to the particular attributes of the Appellants property compared to the comparables (set out above) and on the basis of the legislation a reasonable estimate of the capital value of the Appellant's property as at 1 January 2005 is £200,000. The Respondent has allowed a reduction of 10% for the nuisance caused by the grain drying business. The net result is a capital value on the Appellants property of £180,000.

The Tribunal's Decision

18. 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 Antecedent Valuation Date of 1 January 2005 as a figure of £180,000. On behalf of the Commissioner it has been contended 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.

19. 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.

20. The Tribunal saw nothing in the approach adopted to achieve the initial assessment as to Capital Value, nor in the Decision of the Commissioner on appeal, to suggest that the matter had been assessed in anything other than the prescribed manner provided for by Schedule 12, paragraphs 7 (and following) of the 1977 Order. The statutory mechanism has been expressly referred to in the Commissioner's Submissions to the Tribunal and the Tribunal notes the evidence submitted as to comparables and concludes that the correct statutory approach has been followed in this case in assessing the Capital Value.

21. The Tribunal must then consider whether the evidence put before the Tribunal or the arguments made by the Appellant are sufficient to displace the statutory presumption. The Appellant's arguments have been summarised above.

22. The Tribunal having examined the facts of the matter and the arguments and submissions finds that there is insufficient evidence to support the Appellant's Submissions. The Appellant has not displaced the statutory presumption that the valuation shown in the Valuation List in respect of the Subject Property shall be deemed to be correct until the contrary is shown.

23. There is evidence within the papers considered by the Tribunal that a reduction in Capital Value placed on the Appellant's property has already been made to take into account the nuisance caused by the grain drying plant. The evidence before the Tribunal did not show that the Appellants view over the Du Pont/Invista factory complex is such as to warrant a further reduction in capital value. The Tribunal was satisfied on the balance of probabilities that the Capital Value placed on the Appellant's property is reasonable.

24. Accordingly the Tribunal's unanimous decision is that the Commissioner's Decision on Appeal dated 27 January 2009 is upheld and the Appeal is dismissed.

**M Ranaghan, Chairman
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: