

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

CASE REFERENCE NUMBER: 11/08

PAUL & GILLIAN LEONARD - APPELLANTS
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr John Duffy

Members: Mr Gordon Jackson FRICS and Ms Louise Gordon

Belfast, 29 August 2008 and 3 November 2008

DECISION

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 19 December 2007 and the appellants' appeal is dismissed.

REASONS

Introduction

This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). Mr Leonard appeared and represented the appellants on 29th August. Mr McGrath and Ms Shiels appeared on that date on behalf of the Commissioner of Valuation. There were no appearances on 3rd November, the parties having indicated that they were content at that stage for the matter to proceed on the basis of the papers before the Tribunal.

The appellants by appeal form dated 5 May 2008 appealed against the decision of the Commissioner of Valuation for Northern Ireland (The Commissioner) dated 18 December 2007 in respect of the valuation of a hereditament situated at 76 Harberton Park Belfast BT9 6TT ('the Property').

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"). 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 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."

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

Mr Leonard gave oral evidence on 29 August 2008. The Tribunal considered the following documents:-

1. The Commissioner's Decision on Appeal dated 19 December 2007
2. A document entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Land and Property Services and submitted to the tribunal for the purposes of the tribunal hearing.
3. Letter dated 12 September 2008 with enclosures provided by the Commissioner pursuant to an Order of the Tribunal dated 29 August 2008
4. Correspondence between the tribunal and the parties.
5. Submissions dated 28 August 2008 and 27 September 2008 prepared by Mr Leonard.
6. Copy Mortgage Valuation Report dated 22 July 2005 handed to the Tribunal in evidence by Mr Leonard on 28 August 2008

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 property consists of a dwellinghouse situate at 76 Harberton Park Belfast BT9 6TT. The property is occupied by the appellants who appear to be the ratepayers.

2. The property is a detached, modernised 2 storey house of brick and tile construction with a front paved area and a rear garden. It is located in a popular part of south Belfast and is in good repair. The property has all mains services, is centrally heated and has a single garage. It has a Gross external area of 254sqm. Accommodation comprises a cloakroom, kitchen, 4 reception rooms, WC/bathroom and 4 bedrooms (en-suite).
3. The appellants purchased the property on 30 September 2005 for £535,000.
4. In her "Presentation of Evidence" Ms Shiels stated that in assessing the capital value of the property she considered market sales of properties considered to be comparable together with assessment of similar circumstanced properties in the locality. None of the assessments had been challenged as at 5 August 2005, being the date of the Presentation of Evidence document.
5. Mr Leonard did not accept that the properties referred to by the Commissioner, as above, were proper comparables (see below) and accordingly we adjourned the hearing on 29 August 2008 in the interests of justice in order that further comparables could be provided in accordance with the Tribunal's Order of that date.

THE APPELLANTS' SUBMISSION

The appellants' grounds of appeal were that:

1. The Capital Value assessment is not a true reflection of the market value of the property at the relevant date as the property was bought in September 2005 for £535,000, and
2. Allowing for an increase in property values of 21.25% based on the UJ quarterly house price index report for the relevant date, the property would have been worth £441,234 at 1 January 2005.

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 Antecedent Valuation Date of 1 January 2005 at a figure of £550,000. 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. It is to be noted that there is an important statutory presumption contained in Article 54(3) of the 1977 Order which 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 to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.

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. As there is nothing wrong per se with the Commissioner's approach, the tribunal considered whether the appellant had satisfactorily argued a case to displace the statutory presumption.

The Tribunal proposes to deal firstly with the second ground of appeal. We accept the Commissioner's submission that the UJ quarterly house price index should not take precedence given that it provides only a sample of sales. The LPS database is a much more reliable indicator given that it incorporates ALL available sales evidence.

In relation to the First ground of appeal, Mr Leonard challenged the various comparables suggested by the Commissioner. He submitted that many of the comparables were not valid because they were not based on market value sales. He objected to 41 Harberton Drive as a comparable because it was in a different and more expensive area. He mentioned the development implications affecting 41 and 62 Harberton Park. We adjourned the appeal so that further comparables could be provided by the Commissioner. Those comparables were of considerable assistance to the Tribunal. The overall position is that we have now been provided with particulars of valuation in respect of eight different properties in Harberton Park. Five of those properties (Numbers 33,76,94,96 and 106) have a gross external area in excess of 200 sqm and appear to have broadly similar amenities and accommodation – albeit that the subject property appears to have a larger number of reception rooms. All five properties have been valued in excess of £500,000 and there is

no evidence that any of these valuations have been challenged. Numbers 33 and 94 in particular have Gross External Areas within range of that applicable to the property and have been assessed at £635,000 and £570,000 respectively.

We have also taken into account the appellants' own Mortgage Valuation Report dated 5 July 2005. That report places a valuation of £530,000 on the property (increased to £535,000 after the completion of electrical works).

We conclude that the comparables relied on by the Commissioner and the appellant's own valuation report show that the property has been valued fairly and in tone. The additional sales figures provided by the Commissioner do not alter this conclusion. Those figures suggest to us that values and realisable sale prices for similarly sized properties in Harberton Park may be higher than in Dorchester Park.

THE TRIBUNAL'S CONCLUSION

The Tribunal is extremely grateful to Mr Leonard for his very helpful submissions to the Tribunal and for the courtesy displayed by him at hearing. Regrettably, however, having considered all the arguments and submissions, our unanimous decision is that the appellants have failed to displace the statutory presumption. Accordingly the Commissioner's decision on appeal is upheld and the appeal is dismissed.

Mr John Duffy, Chairman
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: