

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

CASE REFERENCE NUMBER: NIVT 23/08

ROBERT STUART PAYLING – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr Tim Hopkins FRICS and Mr Kenneth Donaghey

DECISION

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner for Valuation for Northern Ireland 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"). The appellant, Mr Robert Stuart Payling appeared at the tribunal and represented himself. The Commissioner for Valuation ("the Commissioner") was represented by Ms Deirdre Shiels and Mr Martin McGrath.
2. The appellant by Notice of Appeal dated 29 August 2008, appealed against the decision of the Commissioner (on appeal) dated 5 August 2008 in respect of the valuation of a hereditament situated at 23E Tobergill Road, Templepatrick, Ballyclare, County Antrim BT39 0DT ('the property').

The law

3. The statutory provisions are to be found in the 1977 Order as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). As the appellant inquired as to the nature of the statutory provisions it may be helpful if the tribunal sets out same at some length.

4. Article 39 of the 1977 Order (as amended by the 2006 Order) states that any dwelling-house, private garage and any private storage property shall be valued on an estimate of their capital value.
5. Paragraph 7 in Part 1 of Schedule 12 to the 1977 Order (as amended) states that "... for the purposes of this [the 1977] 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."
6. The assumptions mentioned in paragraphs 9 to 15 which are relevant to this case are as follows:
 - (a) That the sale is with vacant possession;
 - (b) The estate sold is the fee simple absolute, or in the case of a flat, a lease for 99 years at a nominal rent;
 - (c) The hereditament is sold free from any rentcharge or other incumbrance;
 - (d)
 - (i) 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;
 - (ii) The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date;
 - (d) The hereditament has no development value other than the value attributable to permitted development;
 - (e) Any hereditament falling (or deemed to fall) within the definition in Article 39(1A) or 39(1B) will always fall within that definition.
 - (f) There has been no relevant contravention of any statutory provision or any requirement or obligation whether arising under a statutory provision, an agreement or otherwise.

The evidence

7. The tribunal heard oral evidence from the appellant himself and also from Ms Shiels and Mr McGrath on behalf of the Commissioner. In addition the tribunal had before it the following documents:
 - (a) The Commissioners Decision on appeal dated 5 August 2008;
 - (b) The appellant's Notice of Appeal dated 29 August 2008.
 - (c) A document entitled 'Presentation of Evidence' prepared on behalf of the Commissioner by Ms Shiels and submitted to the tribunal for the purposes of the hearing;
 - (d) Various documents (included photographs) submitted in evidence by the appellant.

The facts

8. The property consists of a detached three storey dwelling-house situated at 23E Tobergill Road, Templepatrick, County Antrim. The property was built by the appellant and was finished at the end of Summer 2007. It has a gross external area of 548.07 m². It has a double garage of 56.35 m². The accommodation comprises 4 reception rooms, a kitchen/reception, a utility room, a wc, a bedroom, ensuite/ 4 bedrooms, a bathroom, 2 ensuites / 2 bedrooms, room and shower room. The property has the benefit of mains electric and water services and a septic tank. The property has full central heating serviced by a ground source heat pump. The capital value of the property was initially assessed at £575,000. This was subsequently reduced to £490,000 on appeal.
9. The Commissioner's Presentation of Evidence to the tribunal admits that as the property is a larger than average self-built detached house, finding direct comparisons of a similar size and age in the immediate locality is difficult and that therefore the search for reasonable comparisons was extended across a wider area. The Presentation of Evidence nonetheless consisted both of assessments in the valuation list of properties considered comparable and also to market sales of similarly circumstanced properties. The appendix to the Presentation of Evidence referred to three properties with assessments and sales particulars and three with capital value assessments only. The

Presentation of Evidence was supplied to the appellant and he responded to this in his submission to the tribunal.

The appellant's submissions

10. The appellant made the following submissions:

- (a) That the property has been erroneously valued in that it has been valued as if it had outbuildings and it has not. Furthermore the property has full central heating by means of a ground source heat pump whereas the Commissioner valued the property on the basis of full oil central heating;
- (b) That the Commissioner's valuation was erroneous in that his valuation as at the antecedent valuation date (1 January 2005) was just £9,000 less than the total build cost of the property in 2007.
- (c) Furthermore, a valuation of the property obtained for mortgage purposes put the value of the property at £800,000 in 2007. House price inflation figures were applied to this valuation by the appellant to contend that a more realistic figure for the capital value at the antecedent valuation date would be £390,000.
- (d) The appellant asserted that there were other comparable houses near to his which were not taken into account, in particular 50 Connor Road, Templepatrick, County Antrim and 15 Tobergill Road, Templepatrick, County Antrim. Furthermore it was suggested that upon examination of the cost per square metre of these properties it was noted that the cost of these were substantially less than that of the property.

The Tribunal's Decision

11. Article 54 of the 1977 Order enables a person who is dissatisfied with the Commissioner's valuation as to capital value to appeal to this tribunal. The submissions on behalf of the Commissioner contend that the capital value is fair and reasonable having regard to other properties and the statutory basis

for valuation as set out in Schedule 12 to the 1977 Order in arriving at that assessment.

12. It is appropriate to remember that there is a statutory presumption in Article 54(3) of the 1977 Order in terms that “On an appeal under this Article, any valuation shown in the 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.
13. The tribunal saw nothing in the general approach taken to suggest that the matter had been approached other than in the manner prescribed in Schedule 12 to the 1977 Order.
14. In relation to the appellants’ submission re the description of the property on the Commissioner’s Decision on Appeal as having ‘an outbuilding’, it was clarified by the representatives of the Commissioner that the Land and Property Services computer system merely referred to a ‘garage’ as an ‘outbuilding’ and that it was confirmed to the tribunal that the property had been valued on the basis of having a double garage and not as having an outbuilding. Furthermore it was confirmed to the tribunal by the Commissioner’s representatives that the description in the Presentation of Evidence of the property as having ‘full oil central heating’ when in fact it has full central heating serviced by a ground source heat pump was not materially relevant in that the fact that the property has this source of heating rather than oil fired central heating has no effect on the valuation.
15. With reference to the submission in respect of build cost it was rightly drawn to the attention of the tribunal in the Presentation of Evidence that it is a well established principle that build cost does not equate to value. As the President of the Northern Ireland Valuation Tribunal stated in *Flannigan v Commissioner of Valuation for Northern Ireland (Case No 05/07)*:

“... some of the appellants’ case has been based upon evidence of building costs. However, building costs do not form part of the statutory basis for capital value assessment that is contained in the 1977 Order. In this case, as in all such cases, the statutory provisions state that the capital value of the property shall be the amount which (on the statutory assumptions) the

property 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. Further, in estimating the capital value regard shall be had to the capital values of comparable properties in the same state and circumstances as the property.”

Therefore the tribunal cannot take into account the build cost of a property when assessing the capital value of a property.

16. The appellant submitted in evidence a thoughtfully prepared table showing (among other things) a valuation figure of the property in 2007 and then seeking to prove how when house price inflation figures were applied to his figure a realistic capital value of the property at 1 January 2005 was £390,000. However it cannot be said that it is just a matter of a simple calculation involving the taking a valuation figure at a point in time and applying a figure for house price inflation to it to arrive at another valuation at another defined point in time. Rather, the capital valuation must be based on the statutory provisions as outlined in the 1977 Order.
17. The appellant contested the nature of the comparables in the appendix to the Commissioners Presentation of Evidence challenging the appropriateness of the comparables and the conclusions to be properly drawn from these comparisons.
18. The tribunal carefully considered the issue as to whether the appellant had provided sufficient challenge to the Commissioner’s schedule of comparables. The appellant referred to the fact that the comparables were not particularly geographically close and were therefore not good comparisons.
19. Finally the appellant submitted that the capital valuation of the property was inaccurate as it resulted in a cost for his property of £894 per m² whereas 15 Tobergill Road has a cost of £774 per m².
20. Taking all factors into account, including the argument and detailed submissions of the appellant and the case advanced on behalf of the Commissioner, the conclusion of this tribunal is that the appellant has not placed before the tribunal sufficient evidence to displace the statutory presumption of correctness of the capital value.

21. The tribunal is very grateful to the appellant for the time and effort he has expended in preparing his submissions to the tribunal both in written evidence and in the oral presentation of his case. In this case however the tribunal concludes unanimously that the Commissioner's assessment of the capital value in respect of the property is correct. The Commissioner's decision on Appeal is upheld and accordingly the appeal is dismissed.

Mr Charles O'Neill
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: