

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: 23/08

ROBERT STUART PAYLING - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Tom Matthews FRICS and Mr Peter Somerville

Ballymena, 19 September 2011

DECISION ON REVIEW

The unanimous decision of the tribunal is that there are no proper grounds made out by the appellant to enable the tribunal to review the decision of the tribunal issued on 26 November 2008 and thus the tribunal's decision is affirmed by this tribunal and the appellant's application for review is dismissed.

REASONS

Introduction

1. This matter relates to an application for a review of a decision of a tribunal ("the decision") in respect of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The decision was issued to the parties by the Secretary of the Northern Ireland Valuation Tribunal ("the Secretary") on 26 November 2008.

2. The Secretary received a letter from the appellant (“the review letter”) dated 11 December 2008 which constituted a request expressly made to the President of the Northern Ireland Valuation Tribunal to review the decision. The review letter runs to some five pages of what must be said to be quite detailed argument and submission and has appended to it a document (called Appendix A) which consists of collated annual percentage house price change by quarter 2004-2007. The history of the matter from the date of receipt of the review letter in 2008 to date of hearing in 2011 is somewhat regrettable. A number of reasons have delayed this review matter being dealt with and disposed of before now. These reasons include the appellant's request that the disposal of this review matter ought properly to be deferred pending the outcome of an appeal which related to neighbouring property. On foot of the appellant's request, the case was adjourned generally. Further to this, the retirement of that person as a member of the Northern Ireland Valuation Tribunal of one of the members who constituted the original tribunal responsible for issue of the decision has also necessitated the re-constitution of an appropriate tribunal panel to deal with the matter. On account of the circumstances prevailing, the President of the Northern Ireland Valuation Tribunal directed that this matter should properly be dealt with by an entirely freshly-constituted tribunal panel, the members of which had not been concerned with the matter prior to this.
3. The appellant has requested that the matter be dealt with on foot of his written application and submissions and has not requested an oral hearing. The respondent has indicated that it has no objections to this course being taken and accordingly the matter has proceeded to hearing, without representation at hearing and in reliance upon the documentation previously submitted by or on behalf of the respective parties.

THE APPLICABLE LAW

4. The Valuation Tribunal Rules (Northern Ireland) 2007 (“the Rules”), as amended, provide at Rule 21 as follows in respect of the review of any decision of the tribunal:-

“21.—(1) If, on the application of a party or on its own initiative, the Valuation Tribunal is satisfied that—

(a) its decision was wrong because of an error on the part of the Valuation Tribunal or its staff; or

(b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented; or

(c) new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; or

(d) otherwise the interests of justice require,

the Valuation Tribunal may review the relevant decision.”

THE HEARING AND THE ARGUMENTS

5. The tribunal at the outset of the matter, in the absence of any statutory grounds being expressly identified by the appellant concerning which of the foregoing specific statutory grounds might be available to the tribunal to conduct a review of the decision, examined the content of the request for a review in the light of the appropriate categorisation of the statutory ground or grounds available for possible review. The tribunal normally in such matters and faced with a request for a review shall examine the issue of whether any party seeking a review (in this case the appellant) has established proper grounds upon which the tribunal might proceed to review the decision. If the party seeking a review fails to establish proper grounds, the review cannot proceed. After examination of the documentation and submissions placed before the tribunal by the appellant, the tribunal identified one potential ground of review. This is the statutory ground contained within Rule 21 (d) of the Rules, the so-called “*interests of justice*” ground. The tribunal then considered in detail the material placed before it by the appellant, including specifically the appellant's detailed arguments as set forth in the review letter.

THE SUBMISSIONS

6. The appellant's submissions, in summary, as mentioned in the review letter included the following:-
 - 6.1 The appellant contended that the hereditament to which the decision relates, being situated at 23E Tobergill Road, Templepatrick, Ballyclare, County Antrim BT39 0DT (“the property”), was newly-built and occupied by September of 2007. The appellant

had had the property valued in September 2007 at £800,000 by a Mr S Bell FRICS. Both that value and the value assessed by a valuer from Land and Property Services (“LPS”) at the same time would need to be converted to take account of the relevant capital valuation date in January 2005 (the “antecedent valuation date” or AVD”).

- 6.2 As the appellant did not have the value ascribed to the property by LPS at September 2007 he had no way of directly comparing what might be termed, in shorthand, the “Bell valuation” with the “LPS valuation”.
- 6.3 The appellant's submission then continues with an examination of the data produced by the University of Ulster and the Nationwide Building Society concerning house price movements, which the appellant has summarised in the appendix to the review letter.
- 6.4 The appellant submits that he had gained the impression from the tribunal which issued the decision that the tribunal considered house price index information as not sufficiently accurate to determine a house price and thus the tribunal disregarded all of the evidence derived from this source. However the difference between the "Bell valuation" and the "LPS valuation" is submitted by the appellant to be too large to be argued away by simply saying that the house price index is not a valid method of calculation. The appellant has submitted that this can give a very good indication of trends and that the size of this difference strongly suggests that there is a problem with one of the valuations.
- 6.5 The appellant contends that the LPS evidence to the tribunal supports this contention with reference to property sales data in support of valuations related to properties sold between August 2004 and November 2005 for between £410,000 and £448,000. In that respect the appellant refers to one particular property with a valuation of £575,000 and the appellant presents some argument concerning that property and valuation issues in support of an argument that a mistake has been made which has had a direct influence on the valuation of his property.
- 6.6 The appellant contends that the respondent was not entitled to rely upon unchallenged capital values as evidence to support valuation assessments and in the absence of any specifically stated methodology, there is been an error in the application of the provisions of the Rates (Northern Ireland) Order 1977. The appellant's contention is that the system of using comparable properties will never provide a true rateable value when the rateable values being used are, in themselves, questionable.

- 6.7 The applicant submits that the evidence brought to the tribunal by him was sufficient to challenge the veracity of the LPS valuation. The appellant had offered a number of arguments to support his case which were not refuted or questioned, with the exception of the use of the house price index in deriving a valuation. The appellant believes that he had argued a robustly argued and very reasonable capital value which was significantly less than the existing LPS valuation. Despite this his appeal was unanimously dismissed.
- 6.8 The appellant in an e-mail sent to the Secretary to the Tribunal subsequent to the review letter had raised one additional point which he stated supplemented his evidence at hearing wherein he had stated that the property had full central heating. He clarified that as the top floor of the property had small individual wall heaters, the central heating only covered the ground and first floor, so in reality there was, the appellant contended, two-thirds central heating in the property.
7. The respondent did not make any specific submissions in respect of this review application matter.

THE TRIBUNAL'S DETERMINATION OF THE ISSUES

8. The tribunal notes the statutory power available to it on foot of Rule 21 of the Rules. The appellant, based upon the assessment of his written submissions contained in the review letter by the tribunal in terms of identification of an applicable ground, has endeavoured to make out his case for review based upon one available statutory ground only. His case is that the tribunal is properly entitled to review the decision upon the "*interests of justice*" ground. That particular statutory entitlement arises from Rule 21 (d) of the Rules, as mentioned above, and is a residuary category, following as it does more specific potential grounds of review within Rule 21 of the Rules.
9. Examining the decision and the appellant's submissions as summarised above, the tribunal, being as it is a newly-constituted panel which comes to the matter afresh, takes particular note of the content of the decision, including the manner in which the tribunal has recorded the evidence and the respective contentions of the parties and the tribunal notes the manner in which the tribunal, at first instance and in reaching

the decision, dealt with and disposed of the material evidence presented to the tribunal and the arguments placed before it. It is noted, in the general terms, that the tribunal's decision has recorded in summary form the essential findings of fact derived from the evidential material which was placed before it. The tribunal has demonstrably summarised and has considered the submissions and the arguments made in the course of the original hearing. The tribunal has dealt with and has disposed of these submissions and arguments in the decision.

10. In respect of the appellant's request for a review of the decision, no specific case law or other authority, whether binding or persuasive, has been identified within the tribunal's own statutory jurisdiction as bearing upon the matter. In the absence of that, the tribunal is of the opinion that the "*interests of justice*" ground ought properly to be narrowly construed, but with a certain range of discretion nonetheless available to the tribunal. That general restrictive and somewhat narrowly-construed approach accords with the accepted practice prevailing within other statutory tribunal jurisdictions, both within Northern Ireland and also in other United Kingdom jurisdictions. The matter, further, has to be seen within the terms of the overriding objective of dealing with cases fairly and justly, contained within Rule 3 of the Rules. It is clear that the specific ground upon which this application is made does not afford a general and broadly-based opportunity to challenge the decision by a dissatisfied party or to re-present or re-argue a case which did not find favour at first instance. The admission of new evidence, for example, will only apply to a statutory ground which the tribunal regards as not having been presented by the appellant, that is to say Rule 21 (c) of the Rules, as mentioned above.

11. Examples to be gleaned from the general statutory jurisdictions of the tribunals concerning the manner in which the "*interests of justice*" ground might arise and be applicable, might pertain to situations where there has been some manner of procedural mishap. The tribunal does not intend to recite case law from other tribunal jurisdictions in this decision but such is readily available, for example, in the field of employment law. One illustration, for example, might be a situation where the tribunal has prevented a party from arguing an essential or central part of a case. Another illustration, perhaps, might be were there was some type of procedural imbalance or other injustice in the conduct of the hearing. A further illustration, for

example, might be where the tribunal had given a material misdirection upon matters of law or procedure. Generally, however, it is broadly accepted that the “*interests of justice*” must include doing justice both to the dissatisfied party seeking the review and also to the other party to the matter. There is an important public interest in finality of litigation and, in general terms, courts and tribunals have been reluctant readily to accord a forum to any unsuccessful party effectively to re-argue a case (indeed what is sometimes colloquially referred to as, “having a second bite of the cherry”). The overriding objective in the tribunal’s Rules bears upon the matter.

12. The tribunal takes particular note of a number of matters. Firstly, from the information available to this tribunal, it appears that the appellant was generally afforded at the original hearing by the tribunal a fair and reasonable facility and opportunity to present his case and to put forward any evidence and argument that he wished to have considered. In the review letter, the appellant expressly confirms that he was courteously treated and that he was allowed to make his submission. He does make some mention that he feels that proceedings were wound up before he had an opportunity to ask any more questions, as he states that he wished to respond to a number of points subsequently raised by the LPS witness. Without further elaboration of that latter point, it is a difficult for this tribunal to determine that there has been any procedural irregularity to the degree that a review is thereby necessitated on that specific issue alone. Certainly this point does not appear to form the main thrust of the appellant's written submission nor is any further detail provided in the review letter, or subsequent, to assist the tribunal in determining the point. In the absence of anything further and when tribunal notes the extensive detail otherwise contained in the review letter in comparative terms and the somewhat passing reference to the point in that letter, the tribunal's determination is that there is not set forth sufficient information or argument in the appellant's case concerning any possible procedural irregularity to the necessary extent that a review of the decision on that specific ground is warranted.

13. Examining the foregoing matters, the tribunal has considerable difficulty in seeing how there are any available grounds put forward by the appellant to constitute the proper basis for a review of the tribunal’s decision, in the “*interests of justice*”. Noting the case made by the appellant and the submissions, the tribunal’s unanimous determination is that nothing presented by the appellant affords any basis for the

decision to be reviewed. Accordingly the tribunal's decision is affirmed as issued and appellant's application for a review is dismissed by the tribunal, without further Order.

**Mr James V Leonard, President
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: *5 October 2011*