

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

CASE REFERENCE NUMBER: 04/08
SAMUEL McMORRAN- APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Ms Nessa Agnew

Members: Mr William Deddis MRICS and Mr Paul McMinn.

Belfast, 27 June 2008

DECISION

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland dated 18 March 2008 is upheld and the appellant's appeal is dismissed.

REASONS

Introduction

This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, Mr McMorrان, appeared and represented himself and Mrs Deirdre Shiels and Mr Paul Boylan represented the Commissioner as respondent.

The appellant, by appeal form dated 31 March 2008 appealed against the decision of the Commissioner of Valuation for Northern Ireland ("the Commissioner") on appeal dated 18 March 2008 in respect of the valuation of a hereditament situated at 10 Tindall Cottages, Templepatrick, County Antrim BT39 0EQ.

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

The appellant gave oral evidence and produced photographs and documents to the tribunal. The tribunal had before it the appellant's notice of appeal to the tribunal (Form 3) and copies of various documents including the following:-

1. The Commissioner's Decision on Appeal dated 18th March 2008.
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. Correspondence between the tribunal and the parties.
4. Copy photographs of the property submitted by the appellant.

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 consists of a dwelling-house situated at number 10 Tindall Cottages, Templepatrick, County Antrim BT39 0EQ ("the property"). The property is

2. The property was built in 2004 and has a gross external area of 170 m². It is a modern end-terrace town house of brick and tile construction. The property has mains services and oil fired central heating. The size of the property is 111m².
3. The subject property was initially assessed as having a capital value of £150,000. Following an application from the appellant this was reduced by the district valuer to £135,000 by a certificate dated 5th October 2007.
4. In her "Presentation of Evidence" Mrs Shiels provided summary details of two further properties all situated within the same development as the property and stated to be comparable to the property for valuation purposes. These included two capital value assessments which were stated to be "unchallenged" and two sales. In addition, in relation to the property this too had been the subject of two sales, one in December 2003 when it was sold for £134,000 and one in January 2006 when it sold for £139,950. In relation to the two other properties, No.3 Tindall Cottages is also an end-terrace townhouse and has a property size of 112m². Its capital value is also £135,000 and it was sold in April 2004 for £132,000. No.9 Tindall Cottages has a property size of 112m² and is a mid-terrace house. It also has a capital value of £135,000 and was sold on 31st October 2003 for £136,000.

THE APPELLANT'S SUBMISSION

The appellant, Mr McMorrان representing himself made a number of submissions.

- 1 His first point was that his property had been initially valued at £150,000. He pointed out that when it was sold at the end of 2003 for £134,000 and in January 2006 it had been sold again for £139,950. As the LPS were in possession of those facts he questioned why the property was initially assessed at £150,000.
- 2 In relation to the fact that neither of the two properties Capital Valuations presented in the Presentation of Evidence had been challenged, Mr McMorrان submitted that at least 7 out of the 10 properties within the development are not owner occupied. They

- 3 Mr McMorran then referred to the written submission he had made in his Notice of Appeal dated 31st March 2008 which stated: “I have trains passing within 100-150 yds of my house, and also lorries, buses and cars (extremely heavy at times) within 8 feet of my front door. We have no street lighting at the rear which because of alarm etc is the way we gain access to the property. The development has been the subject of attempted break-ins, car thefts (3 in the past year) and other types of crime - photographs to follow.”

The LPS in its “Presentation of Evidence “responded as follows:

- i. Regarding the proximity of the subject to both the railway line, quoted by the appellant as 100-150 yards away, and the main road, it is my opinion that the sales evidence of properties within the development fully reflects those locational factors.
- ii. With regard to a lack of street lighting to the rear of the subject, I do not consider that this would have a negative impact on the value of the subject relative to other properties within the development.
- iii. Concerning the issue of attempted break-ins and thefts I am not aware of any evidence which would distinguish the subject from other properties in the development in this regard and consider that the sales evidence fully reflects all factors affecting the development.

Using the numbering used by Mrs Shiels in response to No.2, Mr McMorran stated that he did not regard this as correct. The lack of street lighting to the rear, in the appellant’s view created an environment for thieves and burglars. The appellant then went on to relate four incidents of a criminal nature which save for one involving his own wife, he stated had all been reported to the police and that the police had the necessary documentary evidence.

- 4 The appellant then referred the Tribunal to the Schedule of Comparable Evidence (“the Schedule”) at page 6 of the Presentation of Evidence. In relation to his own property,

- 5 The Appellant then referred to the proximity of the property to the main road which Mrs Shiels had referred to at No 1 of her response as set out above. The appellant noted that Mrs Shiels did not regard the proximity as a problem. The appellant submitted that he had to have his property cleaned every 2 months because of the grime that builds up from traffic. Mr. McMorran then handed to the Tribunal a photograph showing his property just after he had cleaned it and he pointed out how clean it was in comparison to his neighbour's property.

- 6 The appellant summarised by saying that the points he had made were common knowledge in the local area and that the property had been over rated by the LPS.

RESPONDENT'S CASE

Mr. Boylan on behalf of the Commissioner at the outset stated that he would deal with the slightly wider issue regarding policy and that it was Mrs Shiels who had made the valuation under appeal.

In relation to the appellant's first point, as to why the property was originally valued at £150,000, Mr. Boylan pointed out that the Commissioner does not have to defend the value of £150,000 but the current capital valuation of £135,000.

In relation to the appellant's second point that none of the assessments contained in the Presentation of Evidence had been challenged, Mr. Boylan said that he could not say why this was but that he did not dispute the appellant's evidence that the properties had been let out.

Mrs Shiels then dealt with the issue of street-lighting. She submitted that she had looked at the sales evidence and the effects of local factors and submitted that such factors were reflected in the sales evidence. She brought the tribunal's attention to No.3 Tindall Cottages which is also an end terrace house and pointed out that it was essentially the

same house as the appellant's and that it was similarly circumstanced, and that it was also affected by the lack of street lighting to the rear of the property. She submitted that the legislation requires her to look at the actual sale prices and that that supports the figure of £135,000. She further submitted that the best evidence is the sales evidence for the development, particularly the two properties contained in the Schedule as they both front onto the main road. She quoted the sales figures and stated that she did not think that her valuation figure of £135,000 is unreasonable.

In relation to the appellant's point about grime and the noise from the traffic she stated that all the properties which front the main road were similarly affected.

In relation to the issue about crime, Mrs Shiels stated that it was not something specific to these houses.

She pointed out that the valuation date for the purposes of the legislation was 1st January 2005 and that it was a reasonable estimate of the value to reflect the circumstances of the property at that time. She said that regarding the grime the same point applied-the properties were all equally impacted and they were all affected by those locational factors. She was not saying that there was not a problem with grime but that she had used the best evidence to come up with a valuation figure and that figure should reflect everything to do with the property.

In relation to the percentage increase referred to by the appellant, Mr Boylan dealt with this point by submitting that without going into the figures quoted by the appellant that in terms of increases in value, some developments stay stagnant whilst others experience significant growth. He commented that this was the imperfect nature of the property market.

In relation to the subject property it had been sold the year before the Capital Valuation Date for £136,000 and the following year for almost £140,000 and on that basis the valuation of £135,000 is reasonable.

The appellant responded by pointing out that he had lived in the area for 27 years and that he was aware of the criminal activity in the area and that it is relatively low with the

exception of the Tindall Cottage development and that in his view that it is the design of the development which has created this.

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 AVD at a figure of £135,000. 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.

The appellant's main arguments concerned facts which he stated affected his property. In relation to the point that seven of the ten properties were not owner occupied, the Tribunal is of the view that it was open to the owner or the occupier to challenge the Capital Valuation and it cannot take into account why the capital valuations were not challenged. Under Article 54(3) of the 1977 Order "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 to challenge and change that presumption and by simply stating that in his view, the figures for neighbouring properties were not challenged because they were not owner occupied is not sufficient to do so.

In relation to the issue of proximity to the main road and to the railway line, a lack of street lighting to the rear of the property and general concerns regarding crime in the development that the appellant made, the Tribunal is of the view that the Commissioner's evidence,

which is that the sales evidence fully reflects all factors affecting the development, should be accepted. The Tribunal felt that the fact that the two comparable properties contained in the Schedule were all in the same development, fronting the same road and so affected by these three factors in the same way and that the properties in the Schedule are all in the same state and circumstances as the property which is the subject of the appeal. The sales evidence further bears out that the capital value of the property is a reasonable estimate of the market value of the property.

In his evidence, the appellant relied on the arguments that have been set out. Although he did not agree with the £135,000 valuation, he did not produce any evidence from any alternative source to suggest what the capital value should be.

THE TRIBUNAL'S CONCLUSION

The Tribunal is very appreciative that the appellant, Mr McMorran took the time to appear before the tribunal and present the evidence and arguments in a clear and straightforward manner.

On the basis that the two properties in the Schedule prepared by the LPS each had a capital value of £135,000 and on the basis that the tribunal accepted that those properties were comparable hereditaments in the same state and circumstances as the property, the sales evidence in the Schedule supported the case made by the Commissioner and in the absence of any contrary valuation evidence the tribunal's unanimous decision is that the appellant has failed to displace the statutory presumption. The tribunal is of the view that the capital value of £135,000 given the circumstances of this property is fair and reasonable. The Commissioner's Decision on Appeal is upheld and the appeal is dismissed.

Ms Nessa Agnew, Chairman
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: