

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: 5/10

WILLIAM McKENNA - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

**DECISION OF THE PRESIDENT OF THE NORTHERN IRELAND
VALUATION TRIBUNAL ON APPLICATION FOR LEAVE TO
APPEAL TO THE LANDS TRIBUNAL**

I do grant leave to the appellant to appeal to the Lands Tribunal for the reasons set out below.

REASONS

Introduction

1. The appellant, by Notice of Appeal received by the Office of the Northern Ireland Valuation Tribunal (“the Tribunal”) on 23 April 2011, appealed against the decision of the Commissioner of Valuation for Northern Ireland (“the Commissioner”) on appeal dated 31 March 2010 in respect of the valuation of a hereditament situated at 7 Aghindarragh Road, Derrycloony, Augher, County Tyrone BT77 0EU (“the subject property”).
2. The matter was heard before the Tribunal on 25 August 2011. By decision, with reasons, promulgated by the Tribunal on 15 September 2011 (“the decision”) the Tribunal’s determination as set forth in the decision was that the appellant’s appeal should be dismissed for the reasons stated.

3. By letter dated 30 September 2011 (“the appeal letter”), signed by the appellant, the appellant wrote to the President of the Northern Ireland Valuation Tribunal stating his wish to appeal the conclusion of the hearing of “02/08/11” (sic) to the Lands Tribunal. A copy of the appeal letter is appended to this determination.
4. The appeal letter was not referred to me, regrettably, at the time of receipt, but rather was dealt with by the Tribunal on the basis that it constituted a request for a review of the Tribunal's decision under the statutory provisions in that regard. The Tribunal thus examined what was regarded by it as constituting such a request for review and by decision signed by the Chairman of the Tribunal and dated 12 October 2011 it was confirmed that the unanimous decision of the Tribunal was that sufficient grounds to proceed to review had not been established and accordingly the (deemed) application was refused.
5. The appellant was advised of the foregoing outcome by letter from the Office of the Tribunal. In response to this, by letter dated 25 October 2011, the appellant indicated that he had not asked for a review. He referred to his letter of “30/06/11” (sic), which is clearly intended to be a reference to the appeal letter, and the appellant made it clear that the appeal letter had been addressed to the President of the Northern Ireland Valuation Tribunal and requested that his appeal be forwarded to the Lands Tribunal. Accordingly, this matter has now been referred to me as President in order to determine whether or not to grant leave to appeal to the Lands Tribunal under the statutory provisions mentioned below.
6. The appellant's appeal letter sets forth particulars of the grounds upon which such a request for leave to appeal is made by him. Upon reading the appeal letter, I draw from the content thereof the following points made in submission in regard to the granting of leave to appeal:-
 - (a) The decision of the Tribunal has incorrectly and improperly brought into consideration, in reaching the Tribunal's determination, the matter of Disabled Person's Allowance (“DPA”) insofar as this might have affected or might affect the subject property and the level of rates consequently payable by the appellant. The appellant's appeal was made against the

capital valuation determined by the Commissioner upon appeal and that had nothing to do with DPA, which latter ought not to have been brought into account by the Tribunal.

- (b) The Tribunal's decision has not taken proper account of the evidence of the Commissioner's representative, Ms Bennett, regarding particular features of the subject property having what were described by her as, "*...a huge negative effect on the capital value,*" (it is noted that the word "effect" seems to have been construed as "impact" both by the Tribunal in its decision and also in the later correspondence, for that is the word used in substitution). Similarly, the Tribunal has not properly taken account of a letter from the appellant's estate agent, Mr Pollock, adduced in evidence, supporting that latter proposition. Any resultant reduction in the capital valuation pertaining to the subject property afforded by the Commissioner on appeal to the Commissioner, when scrutinised by the Tribunal, does not accord with the evidence and thus the Tribunal's decision is in error in supporting the determination of the Commissioner under appeal. I construe this contention as suggesting perversity of approach on the part of the Tribunal in disregarding the import of the evidence and the appropriate weight and significance to be attached to such evidence.

The Applicable Law

7. The statutory provisions relevant to my determination in the matter are to be found in the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order") and in the Lands Tribunal (Amendment) Rules (Northern Ireland) 2007 ("the Lands Tribunal Rules 2007"). These are as follows (in respect of the 2006 Order): -

"Appeal from decision or direction of Valuation Tribunal

54A. —(1) Any person who is aggrieved by any decision or direction of the Valuation Tribunal under Article.... 54(2) may, with the leave of—

- (a) the Lands Tribunal; or
- (b) the President of the Valuation Tribunal,

appeal to the Lands Tribunal. "

These are as follows (in respect of the Lands Tribunal Rules 2007): -

“ 4. In rule A1—

(a) -

(b) at the end there shall be added the following paragraphs—

“(4) an appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal shall be instituted by serving on the registrar a notice of appeal in accordance with Form AC within 28 days from the date of the grant of leave of appeal by the President of the Valuation Tribunal.

(5) A notice of appeal under paragraph (4) shall be accompanied by—

(a) a copy of the decision or direction of the Valuation Tribunal against which the appeal is made; and

(b) a copy of the decision of the President of the Valuation Tribunal granting leave to appeal.

(6) An application for leave to appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal may be made to the Lands Tribunal only where the applicant has been refused leave to appeal by the President of the Valuation Tribunal. “

8. Dealing with the appellant's first contention, that the decision of the Tribunal has incorrectly and improperly brought into consideration, in reaching the Tribunal's determination, the matter of DPA insofar as this might have affected or might affect the subject property, I note the content of the decision. I approach this determination with some difficulty for the reason that the decision of the Tribunal could have been expressed with greater clarity and precision upon this point. Not without a degree of hesitation, I adopt the view that the decision appears to be making some manner of linkage between what might be termed the DPA issue and the capital value issue; these of course are quite separate and distinct statutory jurisdictions within the Tribunal's function. To the extent that these might have become impermissibly intertwined, I form the view that there is an issue in respect of which leave may properly be given for that issue to be put forward for determination upon appeal to the Lands Tribunal.

9. Addressing then the second of the two contentions, this contention is that the Tribunal's decision has not taken proper account of the evidence of particular features of the subject property having what has been described as, “a huge negative effect (or impact) on the capital value”. I have construed this contention as containing the submission that there has been perversity of approach on the part of

