

**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 10/23**

**MR PETER McGUCKIEN - APPELLANT**

**AND**

**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr J V Leonard, President**

**Members: Mr T Hopkins FRICS and Mr G McKenna.**

**Hearing: 20 November 2023, Belfast**

**DECISION**

The unanimous decision of the tribunal is that the appeal is dismissed by the tribunal, without further Order.

**REASONS**

**Introduction**

1. This is a reference under the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). Rule 11 of the Valuation Tribunal Rules (Northern Ireland) 2007 as amended provides that an appeal may be disposed of on the basis of written representations if all the parties have given their consent in writing. This is such a case.
  
2. The appellant, Mr McGuckien, by Notice of Appeal dated 12 May 2023 and received by the Office of the Tribunal on 19 May 2023 (Form 9), appealed to the tribunal against a Completion Notice issued in accordance with the statutory provisions mentioned below in respect of a hereditament situated at number 18A Farranflugh Lane, Drumsough, Randalstown BT41 2NQ ("the property").

## The Law

3. The relevant statutory provisions are contained in the 1977 Order; these are Article 25B and Schedule 8B to the 1977 Order. The first of these provisions, Article 25B of the 1977 Order, provides in respect of new buildings and completion days and Completion Notices, as follows:-

25B.—(1) Schedule 8B (which makes provision with respect to the determination of a day as the completion day in relation to a new building) shall have effect.

(2) Where—

(a) a completion notice is served under Schedule 8B; and

(b) the building to which the notice relates is not completed on or before the relevant day, then for the purposes of this Order the building shall be deemed to be completed on that day.

(3) For the purposes of paragraph (2) the relevant day in relation to a completion notice is—

(a) where an appeal against the notice is brought under paragraph 4 of Schedule 8B, the day determined under that Schedule as the completion day in relation to the building to which the notice relates; and

(b) where no appeal against the notice is brought under that paragraph, the day stated in the notice.

(4) Where—

(a) a day is determined under Schedule 8B as the completion day in relation to a new building, and

(b) the building is not occupied on that day,

it shall be deemed for the purposes of Article 25A to become unoccupied on that day.

(5) Where—

(a) a day is determined under Schedule 8B as the completion day in relation to a new building, and

(b) the building is one produced by the structural alteration of an existing building,

with the hereditament which comprised the existing building shall be deemed for the purposes of Article 25A to have ceased to exist, and to have been omitted from the list, on that day.

(6) In this Article—

(a) “building” includes part of a building; and

(b) references to a new building include references to a building produced by the structural alteration of an existing building where the existing building is comprised in a hereditament which, by virtue of the alteration, becomes, or becomes part of, a different hereditament or different hereditaments.

The second provision, Schedule 8B of the 1977 Order, provides in respect of Completion Notices as follows: -.

### **Completion notices**

1.—(1) If it appears to the Department that the work remaining to be done on a new building is such that the building can reasonably be expected to be completed within three months, the Department may serve a completion notice on the person entitled to possession of the building.

(2) If it appears to the Department that a new building has been completed the Department may serve a completion notice on the person entitled to possession of the building.

(3) The Department may withdraw a completion notice by serving on the person entitled to possession of the building a subsequent completion notice.

(4) Where an appeal under paragraph 4 has been brought against a completion notice, the power conferred by sub-paragraph (3) shall only be exercisable with the consent in writing of the person entitled to possession of the building to which the notice relates.

(5) The power conferred by sub-paragraph (3) shall cease to be exercisable in relation to a completion notice once a day has been determined under this Schedule as the completion day in relation to the building to which the notice relates.

(6) Except as provided by an order made by the Department, the Department shall not serve a completion notice if it appears to the Department that the building is, or when next in use will be, used wholly for the purposes of a private dwelling.

(7) The Department shall not make an order under sub-paragraph (6) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(8) An order under sub-paragraph (6) may contain such incidental, supplemental and transitional provisions as the Department considers necessary or expedient, including provisions modifying this Schedule.

(9) The Department shall not serve a completion notice in relation to a building of a prescribed class.

In context, the Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 (“the 2011 Regulations”) provided that from 1 October 2011 domestic buildings and parts of buildings for the purposes of the 1977 Order became subject to rating, subject to certain statutory exceptions. Unless excepted, rates are payable on an unoccupied domestic property at the same level as if the property were to be occupied.

## **The Evidence and Submissions**

4. Any evidence and the appellant’s submissions are available from the appellant’s application to the tribunal and the tribunal also considered any other relevant evidence and documentation available, including the following documentation: -
  - Presentation of Evidence prepared by Mr Mark Duffy MRICS on behalf of the respondent and dated 6 June 2023 and submitted to the Office of the Tribunal.
  - Copy correspondence (emails) attaching evidence and submissions sent by the appellant to the Office of the Tribunal and copied to the respondent.
5. The Presentation of Evidence sets out the pertinent statutory provisions and also a timeline which records the following relevant dates: 2 August 2022, the case was registered to value the property; 14 February 2023 a Completion Notice was served

by the District Valuer confirming that 8 March 2023 was considered to be the Completion Date; 20 February 2023 the appellant appealed the Completion Notice to the Commissioner of Valuation and stated in his appeal, *“Construction at very early stage, no plumbing or electrics installed, house not in liveable condition. Building Control also have not yet been contacted to inspect 1<sup>st</sup> fixes and no certificates issued. No intention to finish works in near future”*. The Presentation of Evidence sets out a property description together with photographic evidence and a replication of the appellant’s grounds of appeal which read as follows: *“I dispute the decision made by the Commissioner. This property is NOT COMPLETE nor “reasonably complete” as deemed by the LPS (15 May 2023-completion notice date). LPS failed to inspect the interior of this building site despite two separate requests from myself. Please see included images of the current condition of the property. It is as you can see from these images not in a habitable condition with no plumbing, electrics, floors, ceilings sewers etc. I am being penalised for the slow progress of this replacement build while I still pay rates on the property I am replacing adjacent. I am currently unable to give a projected completion date of this replacement build at this particular time as works have slowed. Works can only be completed when funds are earned. This is the undeterminable timeframe (photographs included 4 pages)”*.

6. In the respondent’s opinion and comments set out in the Presentation of Evidence it is stated that contact details were not provided as part of the appellant’s initial appeal application and therefore the appellant was asked to make contact with LPS, by letter dated 23 February 2023. The appellant contacted LPS via email on 27 February 2023 and the appellant was content for LPS to proceed with the inspection in his absence, which inspection took place on 15 March 2023. During the inspection the LPS representative Mr Duffy noted that the property had reached an advanced stage of completion with roof, windows and external doors intact. External photographic images attached to the Survey Datasheet in connection with the case taken 7 July 2020 showed a similar stage of completion. The reader of the Presentation of Evidence was referred to Appendix 2 to the Presentation of Evidence (the relevant survey datasheet). The further comments made by the author of the Presentation of Evidence, Mr Duffy, include the following observations made by him: Mr Duffy was unable to gain internal access on the date of inspection, however through the windows he was able to ascertain that the house remained in a shell-like condition with some first fix electrical works undertaken. Following his survey, Mr Duffy states that he spoke with the appellant on 14 April 2023 and the appellant explained that only some first fix electrical work had been undertaken, however no first fix plumbing had been undertaken. The internal images provided to Mr Duffy by the appellant as part of his appeal, in Mr Duffy’s opinion, showed the property in a similar state as shown in the images taken by Mr Duffy on the date of his inspection, albeit each image had been taken by Mr Duffy through a window. The appellant informed Mr Duffy that the house had been weathertight for approximately 4-5 years. Mr Duffy explained to the appellant that in Mr Duffy’s opinion the house was Completion Notice ready. Aerial photographs have been provided by the respondent in the Presentation of Evidence to illustrate any progression of construction between 2009 and 2013. The respondent’s submission, as set out by Mr Duffy in the Presentation of Evidence, records that in the appellant’s grounds for appeal to the tribunal the appellant disputes the decision by the Commissioner of Valuation and asserts that the property is *“not complete nor reasonably complete as deemed by LPS”*. However Mr Duffy sought to emphasise that the respondent has deemed that the outstanding works, as at the date when the Completion Notice was issued, could reasonably have been completed within 90 days. A further point, of note, mentioned

in the Presentation of Evidence, is that Mr Duffy informed the appellant that the appellant would be eligible for the “developer’s exclusion” (as it is referred to) which, if the property was vacant, could be up to a period of 12 months from when the property was entered into the Valuation List. The appellant is stated to have informed Mr Duffy that the project timeline would be longer than this foregoing period and that the appellant did not foresee works being completed “*for a few years yet*”, as it is stated in the Presentation of Evidence.

7. In his appeal to the tribunal the appellant asserts that works can only be completed when funds are earned. In respect of one further point raised by the appellant, the Presentation of Evidence states that the appellant had informed Mr Duffy that the correct address for the property ought to be number 18 Farranflugh Lane, *not* number 18A and that apparently the appellant had brought this issue to the attention of Building Control. The premises at 18 Farranflugh Lane was owned *by* the appellant and was situated adjacent to the subject property. The pertinent planning permission relevant to the matter proposed a replacement dwelling (the subject property) with the existing dwelling proposed to be retained and converted to a garage and storage linked to the proposed dwelling. In Mr Duffy’s opinion, in respect of this issue, any requirement to change the address in connection with the property could be done at district level once the property had been entered into the Valuation List and did not affect the validity of the Completion Notice. In concluding the statement of the respondent’s position in this appeal, the submission was that, taking these matters into consideration, the property was Completion Notice ready and the Completion Date had indeed been changed from 8 March 2023 to 15 May 2023, which latter was 90 days from the date when the original Completion Notice had been issued to the appellant. The Presentation of Evidence contained the respondent’s submissions concerning the legal test to be applied in the appeal and sought to reference the previously-determined Valuation Tribunal cases of ***Patton v Commissioner of Valuation*** and ***Moffat v Commissioner of Valuation***. The legal point emerging from these cited cases, so it was submitted, is that the personal circumstances of any appellant should not be taken into account when determining whether a building can be completed within the relevant period (the period provided by the Completion Notice). In the respondent’s submission there is reference made to a further case of ***Dickson v Commissioner of Valuation*** and there is a citation from that the case set out in the Presentation of Evidence.
8. In regard to the appellant’s assertions advanced in this appeal, it might be helpful to set out, in summary, a number of the arguments made by the appellant, which include the following:
  - 8.1 The respondent’s representative had stated that neither money nor personal circumstances should be taken into consideration upon the issue of whether the subject property could be completed within three months. The test adopted seemed to rely on whether a competent builder with sufficient resources could complete works within three months and this was the deciding factor.
  - 8.2 In going with this theory, the appellant asserted that he had spoken to “*multiple long established independent and competent builders*” for their input into his situation, to establish an estimated duration to complete his building, regardless of money being an issue and having reasonable resources available. He asserts that the general consensus from what he terms these “*construction experts*” is that the relevant duration was in excess of three months and was closer to the range of 6 to 9 months. The appellant, however, does not seek to identify any of these stated

experts nor are any technical or other reports made available to assist the tribunal. The appellant, further, seeks to distinguish his case factually from the case of *Dickson v Commissioner of Valuation*.

8.3 The appellant states that he has been informed by his experts that for “ultra-flow” screed now used in construction (and here he seeks to quote from what he states to be the manufacturer’s own technical data): “*Under good drying conditions of 20°C and 65% relative humidity, Ultraflo® hemihydrate liquid floor screed laid at 40 mm will dry in 40 days. It will dry at 1 mm per day for the first 40 mm and then 1/2 mm per day for each mm in additional depth*”. The appellant asserts that he has yet to see 20°C in autumn and winter months which he says is a factor to be considered and for the screed needed in his house the depth is 70 mm. He states that the drying calculation is 40 days, plus an additional day for every 0.5 mm over 40 mm, which is 30 mm in his case, which equates to another 60 days. He asserts in total a 100 days’ drying time, provided a temperature of 20° and a relative humidity of 65° is maintained. 100 days is greater than three months/90 days. He further asserts that his “experts” (again identified) have told him that they cannot proceed to second fix plumbing until first floor coverings are installed and, unless fully dried, the floors will ultimately crack and that it would be a waste of resources, money and effort and they (the experts) would not stand over any work carried out. The appellant further states that his experts have called into question the validity of the sequence of works presented by the Commissioner’s representative, for example that the plastering and skimming of walls after the finished floor screeds have been installed is not rational, he states, and is not done in the real construction world for new builds “*as elaborated by the competent experts*”, as he puts it.

## **THE TRIBUNAL'S DECISION**

9. This is a case where, until the advent of the statutory “unoccupied premises” provisions, such as are provided for by the 2011 Regulations, the subject matter of this appeal, being a domestic property, would very probably not have given rise to any significant issues. However, the current regime has been operative now for quite a number of years. Thus, the subject property potentially falls for inclusion within the Valuation List upon the service of a Completion Notice and upon deemed completion upon the relevant day as specified.
10. In regard to Article 25B and Schedule 8B of the 1977 Order, Article 25B provides that Schedule 8B (which makes provision with respect to the determination of a day as the Completion Day in relation to a new building) shall have effect. Where, as in this case, a statutory Completion Notice is served under Schedule 8B and the building to which the notice relates is not completed on or before the relevant day, then the building (in this case the subject property) shall be deemed to be completed on the relevant day. The Completion Notice was issued and it prescribed a relevant date. That date was amended from 8 March 2023 to 15 May 2023, which latter is 90 days from the date when the original Completion Notice was issued to the appellant. The subject property has not been completed, notwithstanding this. In the context of this appeal, it is noted that the appellant does not seek to specify any date by which he would assert that the subject property would or will be indeed completed.
11. The respondent's contention is that, under the statutory provisions, the respondent is not permitted to take account of the individual’s personal circumstances; a number of earlier Valuation Tribunal decisions are cited, in support, in that regard. It is sufficient

to say that, in this case, the tribunal intends to adopt no differing approach than previously and the tribunal determines that it is appropriate to continue the line of determinations grounded upon what has been stated previously in a number of decisions, indeed those that have been expressly mentioned in the respondent's submissions made in the context of this case. The appellant might seek to distinguish the facts of his case from the facts of certain earlier cases, but the principles, nonetheless, that are properly to be adopted by the tribunal in these matters remain unchanged and constant. Thus there is no reason to depart from these established principles. Accordingly, for the reasons stated in the earlier cases, the personal circumstances of the appellant in this case, financial or otherwise, are not properly to be taken into account.

12. It is perhaps useful, at this point, to stand back somewhat from the facts in this specific case and briefly to observe the purpose and intent of the current statutory regime. Property tax affecting domestic properties is in certain respects no different from other taxes. For instance, in terms of income tax, any taxpayer is not afforded the facility personally to determine if that taxpayer is eligible or ineligible for taxation and, indeed, when any tax assessed must be paid. Such taxes are administered in accordance with long-standing principles and procedures. In that regard property tax (the current domestic rating regime) is no different. Regarding the specific issues raised in this case, it is not within any property-owner's gift personally to determine when a property may be completed and may be subject to rating. The regime has been designed to afford an opportunity to any property builder to proceed with due diligence and to complete construction in a manner that the property will then be included in the Valuation List and will be subject to rating. The matter of the determination as to when that inclusion might be is removed from the property owner. That is done under the Completion Notice system. That provides for a determination, under the statutory provisions, of a fair and reasonable opportunity to any person to complete any construction. If the property owner seeks to defer or delay completion of construction, whether due to financial circumstances or otherwise, the "clock continues to tick", as it were, and the property is nonetheless rendered eligible for inclusion in the Valuation List and it is thereafter subject to rating. It must be emphasized that is not within the property owner's discretion to avoid this, by any action or inaction. This latter is the essence of the current regime: it is a regime which must be applied by the Valuation Tribunal in determining appeals of this nature. The interpretation of the word "*reasonably*" is present (in Schedule 8B (1)(1) of the 1977 Order - "*....the building can reasonably be expected to be completed within three months...*"). In the tribunal's view, that certainly does not direct attention towards the financial or other circumstances of the individual, or indeed any matter of personal choice or discretion, but rather it represents an entirely objective test.
13. The tribunal has carefully noted the timeline concerning the progression of this construction and the various elements comprising the appellant's appeal. Dealing with these in turn, the tribunal has been shown no compelling evidence, whether by expert's report or otherwise, contained as any part of the appellant's appeal, that the subject property could not be completed within the period provided for by the Completion Notice. The tribunal has noted what the appellant asserts that he has been informed by "experts". However, the tribunal is not persuaded by these assertions, which are unsupported. To take but one example of what has been argued by the appellant, this relates to the duration of the drying out of a screeded floor. The tribunal, taking into account the inherent expertise available to it, does not

accept the assertion that proceeding with the construction process would be impeded in such a way as argued by the appellant. The tribunal ultimately finds these arguments unpersuasive. Further, the tribunal notes what appears to be, in the tribunal's view, an eminently reasonable proposal from the respondent that the appellant might avail of the so-called "developer's exemption". There is no indication available to the tribunal as to whether or not that offer had been taken up by the appellant at any time; that was a matter for the appellant. However, to come back to the central issue, it cannot be within the appellant's gift to exercise his own discretion to proceed with construction as and when his personal finances or other circumstances permit. The matter must be objectively assessed: that is precisely what the respondent has done in this case, applying the normal principles of assessment in accordance with established law and practise. That being so, the tribunal's determination is that the service of the Completion Notice in this case and the time provided to the appellant is fair and reasonable, taking into account all the relevant circumstances.

14. For these reasons, the appellant's appeal cannot succeed. The appeal is accordingly dismissed by the tribunal, without further Order.

**J V Leonard, President**

**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties: 4/1/2024**