

**NORTHERN IRELAND VALUATION TRIBUNAL**

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

**CASE REFERENCE NUMBERS: NIVT 43/12 & NIVT 47/13**

**MR ANDREW McCLELLAND - APPELLANT**

**AND**

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

**Northern Ireland Valuation Tribunal**

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

**Members: Mr Eric Spence MRICS and Ms Angela Matthews BL.**

**Hearing: 31 March 2015, Belfast**

**DECISION**

The unanimous decision of the tribunal is that the Completion Notice appeal in the matter is dismissed.

**REASONS**

**Introduction**

1. These are references under the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, Mr Andrew McClelland, indicated in his initial Notice of Appeal (in Form 9, referenced as case NIVT 43/12) dated 20 August 2012 that he was content for that appeal matter to be disposed of by written representations and the matter was accordingly dealt with by the tribunal at a hearing at Belfast on 31 March 2015. The appellant had also indicated in subsequent Notice of Appeal (in Form 3), undated but received by the office of the Tribunal on 19 February 2014 (and referenced as case NIVT 47/13, but perhaps somewhat ambiguously in the manner that he completed the Form) that he might have wished to have an oral hearing of that specific matter. Examining that latter application for appeal, the appeal concerns the capital valuation of the subject property. By order made and dated 21 February 2014, the President of the Tribunal extended time, upon application of the appellant and without objection by the respondent and thus ordered time to be extended to 19 February 2014 for the appellant to deliver a Notice of Appeal under rule 5 of the Valuation Tribunal Rules (Northern Ireland) 2007, as amended (the 2007 Rules). As far as can be observed from the papers available to this tribunal at hearing, that latter capital value appeal has been put into suspense

pending the determination of the initial appeal concerning the Completion Notice, which Completion Notice appeal case is now further referred to below.

2. Regarding the initial (Completion Notice) appeal, the appellant by Notice of Appeal (in Form 9) dated 20 August 2012, appealed to the Tribunal. The appeal consisted of a challenge to the Completion Notice which had been served in accordance with the pertinent statutory provisions mentioned below in respect of a hereditament situated at number 66 Sloughan Road, Drumquin BT78 4QG (“the subject property”). The history of the matter is that a Completion Notice was issued and was served in respect of the subject property dated 15 May 2012 specifying that the subject property could be completed by 15 August 2012. This Completion Notice was appealed by the appellant to the Commissioner of Valuation (“the Commissioner”). The subject property was inspected on behalf of the Commissioner on 19 July 2012. By Commissioner’s Decision on Appeal of a Domestic Completion Notice dated 26 July 2012, the Commissioner’s decision was to determine that the Completion Notice was deemed to be valid.
3. The appellant then instituted an appeal (in Form 9) to the Northern Ireland Valuation Tribunal which was received by the office of the Tribunal on 24 August 2012. It is regrettable that there has been a considerable delay in the matter coming before this tribunal for a determination. This delay appears in some manner to be connected administratively with the subsequent capital valuation appeal mentioned above which had been pursued by the appellant and which was brought by appeal (in Form 3) received by the office of the Tribunal on 19 February 2014, with time having been extended, as indicated above. In any event, for whatever reason matters have not been progressed administratively as they ought properly to have been and the tribunal extends its apologies to the parties on that account. This decision and determination will deal, insofar as possible, with both of the appellant’s separate appeals.

## **The Law**

4. The statutory provisions material to the issue of Completion Notices are to be found in the 1977 Order. Article 25B and Schedule 8B to the 1977 Order are the relevant 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.

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.

It is not necessary in this decision to refer in anything other than summary detail to the statutory provisions which bear upon the rating of empty homes. The relevant provisions are included in the Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 ("the 2011 Regulations"). The effect of the 2011 Regulations is that from 1 October 2011 domestic buildings and parts of buildings (as well as non-domestic buildings or parts of buildings) for the purposes of Article 25A of the 1977 Order became subject to rating, subject to certain statutory exceptions, which exceptions do not apply in this case. In summary therefore, rates are payable on an unoccupied domestic property at the same level as if the property were to be an occupied domestic property.

### **The Evidence and Submissions**

4. Any evidence and the appellant's submissions concerning his Completion Notice appeal, as this is a written representations case only, are available from the appellant's appeal form (Form 9) which has been read together with a letter from the appellant to the office of the Tribunal dated 4 August 2012 and the tribunal also considered the following documentation in regard to the subject property: -

- Presentation of Evidence dated 16 December 2013 prepared by Mr Henry Walls MRICS on behalf of the respondent.
- Completion Notice Appeal Report dated 13 December 2013 prepared by Jayne McFaul RIBA, in respect of the subject property.
- Copy Commissioner's Decision on Appeal of a Domestic Completion Notice dated 26 July 2012.

- Copy correspondence from Messrs Murnaghan Colton, Solicitors.
  - Copy report dated 25 March 2013 from William Porter & Son, Auctioneers Estate Agents and Valuers.
  - Photographs of interior of subject property and location map
5. It was contended by or on behalf of the appellant by his Solicitors, Messrs Murnaghan Colton, that the subject property, as at January 2014, had not yet been completed. Reference was made to copy colour photographs which confirmed, so it was contended, that there were still significant internal works to be carried out to this new build property and that it was clear that the subject property was far from habitable at that point. It was stated that there was no electricity connection to the subject property nor was there any water mains connection or sewerage system. It was strongly refuted that the subject property could be deemed complete, as there were further significant internal works required to be carried out before it could be deemed to be complete for the purposes of habitation. In support of this contention a copy of a valuation/condition report dated 25 March 2013 from William Porter & Son, Auctioneers Estate Agents and Valuers, was referred to, indicating a valuation by that firm, in unfinished state, of £40,000.
  6. The tribunal examined the content of the report from William Porter & Son, which report was deemed to have an inspection date of 25 March 2014. This document reported that the subject property could be described as having only a “builder’s finish”, having a lot of work still to be carried out before it would be fit to be lived in. The subject property, in accordance with this report, still had to be fitted out with a kitchen, a bathroom, internal doors, skirtings, underfloor heating still to be completed, a fireplace in lounge still to be installed and oil heating still to be connected. The report further stated that the subject property was approached only by a farm lane and that there had been no landscaping of the grounds.
  7. The Commissioner’s Presentation of Evidence report presented to the tribunal included a report from Jayne McFaul RIBA which specified a three months “timeline” concerning the specific works that were identified as still requiring to be attended to in order to complete the subject property. This latter report identified, with reference to a sequence of weeks, on a week by week basis over a three-month period, the various items which, in the opinion of the author of the report could be completed throughout week 1 up to and including week 12, such as were specified in the “timeline”. The author of the report, Jayne McFaul RIBA, confirmed her professional opinion to be that the work outstanding could reasonably be completed within the period of three months specified and that the Completion day as given was reasonable. This report from Jayne McFaul RIBA was dated 13 December 2013.

## **THE TRIBUNAL'S DECISION**

8. As this was not an oral hearing, the tribunal did not have an opportunity to question the appellant or his representatives upon the content of this latter report from Jayne McFaul RIBA and at no point in the papers available to the tribunal did the appellant

expressly take issue with the content of the report or its conclusions, save to adduce evidence and opinion by means of the report from William Porter & Son, which latter report makes observations at a somewhat later date, but nonetheless does not address the specific issue of the feasibility or reasonableness of completion within the timescale mentioned in the McFaul report. At no stage, therefore, has an explanation been afforded by or on behalf of the appellant as to why the timescale indicated in the report of Jayne McFaul RIBA could not have been attained and why completion could not have been effected within that specified timescale. That being the case, the tribunal, upon the weight properly to be attributed to all of the evidence and taking account of the opinions expressed, accepts as being persuasive the content of the report from Jayne McFaul RIBA, which report confirms without equivocation that the subject property could have been reasonably completed within the period of three months that has been provided in the Completion Notice and which report has confirmed, in accordance with that view, that the date specified in the Completion Notice was reasonable. The Completion Notice and the legal consequences flowing therefrom are thus effective and the subject property therefore becomes subject to rating in accordance with the statutory specification which has been activated by that Completion Notice. This being so, by unanimous decision, the appellant's appeal against the Completion Notice cannot succeed and this appeal is dismissed by the tribunal.

9. This leaves outstanding accordingly the matter of the appellant's capital valuation appeal which, as has been mentioned earlier, was initiated by appeal (in Form 3) received by the office of the Tribunal on 19 February 2014, with time then being extended, as indicated above. It appears that little or no steps have been taken to progress this capital value appeal to a hearing. Accordingly, the tribunal now directs that this appeal shall be given priority and that the necessary steps shall be taken by the respective parties and by the Tribunal Secretary to bring this matter to an oral hearing (if that, after further clarification has been established, has indeed been requested by the appellant) as soon as practicable, or for other appropriate and timely disposal of the appellant's capital valuation appeal under the Tribunal's procedures.

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

**Date decision recorded in register and issued to parties:**