

**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 28/16

MR THOMAS CAWLEY - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Stephen Wright

Members: Mr Hugh McCormick MRICS and Mr David Rose

Hearing: 16th May 2018 - Belfast

DECISION

The unanimous decision of the tribunal is that the appeal is dismissed.

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 Thomas Cawley, by Notice of Appeal dated 6th March 2017 2017 and received by the office of the tribunal on 7th March 2017, appealed to this tribunal against a completion notice issued in accordance with the statutory provisions mentioned below in respect of a hereditament situated at number 4B Garvan Road, Glebe, Sion Mills BT82 9NZ ("the subject property").

The Law

3. The relevant provisions are to be found in the 1977 Order. Two specific provisions of the 1977 Order are to be noted, these being Article 25B and Schedule 8B to the 1977 Order. 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.

Documentation

4. The following documents have been considered by the Tribunal:-
- (a) The Notice of Appeal against the valuation for rating purposes (Form 9) dated the 6th March 2017
 - (b) Completion Notice dated 27th February 2017
 - (c) Presentation of Evidence by the Commissioner of Valuation by Alison Jackson 22nd January 2018
 - (d) Letter from Thomas Cawley dated 30th January 2018
 - (e) Copy correspondence sent by the Office of the Tribunal to the appellant.

The Evidence and Submissions by the Appellant

5. The Appellant in his Notice of Appeal states inter alia I wish to serve a notice of appeal in respect 4B Garvan Road ,Glebe, Sion Mills BT82 9NZ for the following reasons. I am building this house for to live in myself. The house does have windows, doors and roof completed to seal from the weather. The following has still to be completed:-

1. All electrical work including connection to the Grid
2. All plumbing and heating work
3. All water, sewage work and Water connection drains and manholes and connections
4. Finished floor downstairs
5. All ceilings and insulation

6. All stud walls upstairs
7. Stairs
8. Installation of kitchen, bathroom and heating boiler / radiators
9. All plastering inside and out

I estimate this will cost me about £40,000 and will take me about 5 years from now to complete. I am unable to borrow this money as I was declared bankrupt in 2011 and so I am building the house gradually as I save money. I am self-employed and it would be impossible for me to complete house any sooner.

Mr Cawley further states in his Notice of Appeal. "I appeal on the ground of my bankruptcy"

6. In further correspondence dated 30th January 2018 to the Tribunal Mr Cawley states, "I wish to reiterate the following main reasons for not being able to complete the above house totally in the short term:-

1. I was declared bankrupt in 2011.
2. The estimated cost to complete the to do list on my previous letter is approximately £40,000.
3. I am unable to take out a loan for this amount because of my bankruptcy.
4. I am self-employed and I estimate it will take me 5 years to complete at an average spend of £8,000 per year."

The Evidence and Submissions by the Respondent

7. A Completion Notice in accordance with Schedule 8b Of the Rates (NI) Order was served on Mr Cawley, the Appellant, on the 27th February 2017 stating that the property could reasonably be completed on the 7th May 2017 with a further 12 months developers exclusion allowed .

8. Ms Jackson states in her Presentation of Evidence dated the 22nd January 2018 by reference to photographs of the subject property she states the following.

"The Subject property is a 3 bedroom detached house located to the rear of 4 Garvan Road, Sion Mills.

The Subject property is currently wind and weather proof. All doors and windows are in place. There is no external plaster. No sewerage, water or electric.

In the Kitchen area – there is no floor screed, plaster, electrics, ceilings or units.

In the Living area into the kitchen there was no screed, plaster etc.

In relation to the 2nd bedroom. There are Wooden partition walls but they have no plasterboard. In relation to the: 3rd bedroom there is no ceiling, no plaster, no electrics etc.

With reference to the Master bedroom with ensuite, the wooden sub walls are in place but, no plasterboard, plaster or ceiling.”

In relation to the photograph of the Upstairs Bathroom no fittings have been installed.

9. Ms Jackson concluded:-

“Although the property is in a bare state internally the property is wind and weather tight and could be completed within 3 months. Completion notice is therefore considered valid. I explained the legislation to Mr Cawley and also the 12 months developers’ exclusion, he seemed to understand. Mr Cawley said the property will not be finished any time soon due to financial reasons. I explained that personal circumstances are not taken into consideration and detailed the Moffet NIVT case.”

Decision of the Tribunal

10. 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.(*emphasis mine*)

There are two matters to be determined.

- (i) Are the economic factors of the Appellant a relevant consideration in accordance with the relevant statutory authorities of Article 25B and Schedule 8B to the 1977 Order which are set out in full above?
- (ii) Could the work remaining to be done be completed within the terms of Completion Notice namely 3 months?

(i) Economic difficulties of the Appellant

- 11. It is noted that the main contention of the Appellant in his Notice of Appeal as stated I appeal on the ground of my bankruptcy”
- 12. In this connection I refer to two decisions in which the law is analysed in detail by Mr Leonard President of the NIVT namely the cases of *Moffett V COV Ref:15/12* and *Robert Dickson V COV ref: NIVT 5/14*
- 13. In the case of *Robert Dickson v COV NIVT 5/14*.The president of the tribunal made comments that are directly relevant to the facts of this case:-
 - 8. *“The appellant has very clearly articulated his personal circumstances and in particular the financial circumstances which apply to his progressing the construction work in respect of the subject property. It is the contention of the respondent that financial considerations are irrelevant to the determination. The tribunal fully comprehends the case made by the appellant that his personal financial circumstances ought properly to be taken into account and that, in practical terms, it is not financially possible for him to arrange the progression and completion of the construction and finishing of the subject property within the time stipulated in the Completion Notice.*
 - 9. *The respondent's contention is that, under these statutory provisions, the respondent is not permitted to take account of the individual's personal circumstances. Examining these contentions (as has been commented upon in detail in the earlier case of Moffett) it is very evident that there is nothing expressly stated in the legislation concerning the taking into account of any individual's personal financial or*

other circumstances. The statutory provisions are entirely silent in that respect. In that earlier case, the Tribunal had to determine whether it could read into the legislation something which was not expressly mentioned; the Tribunal determined that it could not do so. This tribunal must assume that this latter interpretation is correct, as it has not been successfully challenged upon appeal, nor is there any other binding, authoritative or persuasive interpretation causing this tribunal to take a contrary or a different view. Provisions accordingly exist for the service of Completion Notices in “new-build” properties and for deemed completion of such properties under construction (whether or not any such are actually completed). These provisions now mean that the subject property may be included in the rating list, unless otherwise exempt.

10 *As has been mentioned previously in Moffett, the tribunal's considered view is that the legislation is intentionally silent upon the matter of personal circumstances and the absence of any mention is not incidental or accidental. For this reason any such personal circumstances are not properly to be taken into account by the tribunal in the determination of this appeal. Accordingly, the tribunal's focus must be directed to the issue of whether or not any building can, objectively assessed, reasonably be expected to be completed within the period of three months that has been stipulated.”*

14. The tribunal concurs with this interpretation and whilst recognising the personal hardship of the Appellant, states that as a matter of Law that his personal financial circumstances cannot be taken into account when adjudicating on this appeal

(ii) Can the remaining Work be completed within 3 months

15. This interpretation or construction of the statutory provisions provides for the focus to be directed not upon the issue of personal circumstances of any individual, but rather upon the issue of whether or not any building can, objectively assessed, reasonably be expected to be completed within three months.

16. Whilst the evidence in the case could certainly have been fuller and more comprehensive there is sufficient evidence by the both the Appellant and Respondent to adjudicate this matter. In this regard the Tribunal would request that all the expert witnesses for the Commissioner of Valuation carefully consider and implement any such future hearings the most helpful guidance set out at paragraphs

20-22, by the President of the Tribunal Mr Leonard in the case *Moffatt v COV Ref 15/12*. In particular that “A *“timeline” in respect of works to be undertaken and reasonably to be completed, with reference to any specified period contained in any completion notice, would be very helpful to the tribunal in conducting its task of bringing to bear an objective scrutiny of the issues and in reaching any resultant determination. The forgoing of course would also be very helpful as far as the appellant in any such appeals might be concerned.*”

17. Notwithstanding this observation, on the facts of this case (and, leaving out of the reckoning the appellant's personal financial circumstances), there is sufficient evidence for the tribunal to determine the question, whether, on the basis of the work listed and requiring to be completed, the subject property could reasonably be expected to have been completed within three months. The answer to that question is in the affirmative. There is no clear evidence that anything listed in the available documentary evidence as requiring to be attended to in order to complete the Subject property could not have been attended to and completed by the date specified in the completion notice. That is the focus of the Tribunal's attention and consequent determination. In the professional view of the Land and Property Services the Presentation of Evidence by the expert witness Ms Jackson and also the view of this Tribunal and in particular Tribunals expert member Mr McCormick MRCIS that the remaining work, (notwithstanding the issue of finance which is not a relevant consideration under the statutory frame work), could have been reasonably expected to be completed within three months.
18. For these reasons, applying the necessary interpretation which must, irrespective of the appellant's personal circumstances, be applied to the case, the tribunal determines that the appellant has not successfully challenged the Completion Notice and the upholding of the Completion Notice upon appeal to the Commissioner. Accordingly, the appeal cannot succeed. The tribunal's unanimous decision is that the appeal is thus dismissed.

Signed: Stephen Wright Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to all parties: 25 October 2018