

**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 66/12**

**MR EAMONN GORMLEY - 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 Dr Peter Wardlow**

**Hearing: 17 February 2016, Belfast**

**DECISION**

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

**REASONS**

**Introduction**

1. This is a reference under the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant indicated that he was content for the appeal to be disposed of by written representations.
2. The appellant, Mr Eamonn Gormley, by Notice of Appeal (in Form 9) appealed to the Tribunal. The appeal sought to challenge the Completion Notice which had been served, in accordance with the statutory provisions mentioned below, in respect of a hereditament situated at 16A Meenacloy Road, Castlederg, County Tyrone BT81 7SN ("the subject property"). A Completion Notice was issued and served in respect of the subject property, dated 17 May 2012, specifying that the subject property could reasonably be completed by 15 August 2012. This Completion Notice was appealed by the appellant to the Commissioner of Valuation ("the Commissioner") being the respondent to this appeal and, by Commissioner's Decision on Appeal of a Domestic Completion Notice dated 29 October 2012, the Commissioner's decision was that the Completion Notice was determined to be valid. Accordingly, the tribunal has to determine this appeal from the Commissioner's Decision, taking account of

the written evidence and other material adduced in this written representations case and by the application of the relevant law to the facts.

## **The Law**

3. Although the relevant statutory provisions have been set out in previous decisions of the Tribunal in matters of this nature, it is perhaps worthwhile setting out the relevant provisions. 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.

As has been the practice of the Tribunal in respect of decisions relating to other cases of this nature, it is only necessary to refer in summary detail to the specific statutory provisions which concern the rating of empty homes which are included in the Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 (“the 2011 Regulations”). On account of the statutory remit of the 2011 Regulations, 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. This is subject to certain statutory exceptions, which do not apply in this case. Accordingly, rates are levied upon an unoccupied domestic property at the same level as if the property were to be occupied. Such an

unoccupied property is, by this means, included in the domestic rating list and thus is liable to rating.

## **The Evidence and Submissions**

4. The tribunal examined the following material documents placed in evidence, in addition to the appellant's appeal form (Form 9): -
  - Presentation of Evidence dated 16 May 2014 prepared by Mr Henry Walls MRICS on behalf of the respondent.
  - Completion Notice of Appeal Report dated 9 May 2014 prepared on behalf of the Commissioner by Jane McFaul RIBA, in respect of the subject property.
  - Commissioner's Decision on Appeal of a Domestic Completion Notice dated 29 October 2012.
5. The appellant, in his written appeal, set forth brief grounds. He indicated that the subject property would not be completed in the near future as he did not have enough money to do so. He did not elaborate upon that statement nor did he provide any further information. No other evidence or information was available save from the respondent's side. Such further information was available from the Presentation of Evidence where it was reported that an inspection of the subject property (by Mr Henry Walls on behalf of the respondent) took place on 10 October 2012. At the time of inspection the subject property was deemed to be watertight, with doors and windows installed. It was internally plastered and second fix electrics had been started. Central heating radiators had been fixed. In the opinion of Mr Walls, the main building works were substantially complete. The subject property was connected to all services. The work required to complete the subject property was reported as comprising the following: second fix plumbing, some second fix electrics, second fix joinery, roof insulation and kitchen and sanitaryware works. Mr Walls in the Presentation of Evidence report expressed the opinion that these final works could reasonably be completed within a period of three months and that therefore the Completion Notice was to be deemed valid.
6. The other source of information available to the tribunal was the report dated 9 May 2014 from Jayne McFaul RIBA prepared for the Commissioner. This report provided a helpful "timeline", illustrated week-by-week, covering the three-month period from the commencement date provided by the Completion Notice, 17 May 2012, up to 15 August 2012. This report divided the identified works which required to be deducted into twelve categories and, in the case of each of these categories, indicated when each could be sequentially completed. The report concluded that all of these works could be completed by the end of "week 12". There was no evidence from the appellant to controvert the information available from this report. Accordingly, the

report from Jayne McFaul RIBA was accepted as being compelling evidence by the tribunal.

7. This leads the tribunal then to consider the proper interpretation and application of the statutory regime, referred to above. The appellant had raised in his appeal a single issue, inviting the tribunal to consider his personal financial circumstances. There was no challenge made to the capital value ascribed to the subject property. The tribunal thus has to consider if such circumstances might properly be taken into account by the tribunal in the determination of this appeal. On behalf of the respondent it was contended that there was no scope in the legislation to allow an individual's personal circumstances to be taken into account. In this regard, this tribunal was referred to the Tribunal's earlier decision in the case of *Neil Moffett –v- COV [NIVT 15/12]*.

### **THE TRIBUNAL'S DECISION**

8. This is a case where the impact of the 2011 Regulations is quite evident. With the coming into effect of the rating regime in respect of unoccupied domestic premises, the subject property potentially falls for inclusion within the rating list upon the service of an effective Completion Notice and upon the expiry of the specified period, with deemed completion to follow once that period expires and consequent inclusion within the rating list. This Tribunal has earlier addressed these specific issues in a number of cases of this nature. In a matter determined in 2012, *Neil Moffett –v- COV [NIVT 15/12]* the determination of the Tribunal is therein set out in some detail. (See also *Robert Dickson –v- COV [NIVT 5/14]*).
9. The appellant, in his appeal, has briefly mentioned his personal financial circumstances, which circumstances he states have prevented him from completing the construction work in respect of the subject property. The respondent argues that financial considerations are irrelevant. Examining these arguments (and as has indeed been commented upon in some detail in the earlier case of *Moffett*) there is certainly nothing expressly stated in the legislation which would permit the tribunal to take into account any appellant's personal financial or other circumstances; the statutory provisions are entirely silent in that regard. In *Moffett*, the Tribunal was tasked with reaching a determination as to whether it could permissibly read into the legislation something that was not expressly mentioned but a matter which, upon one argument advanced at the time, ought to be implied. The Tribunal determined in that case that it could not do so. The Tribunal's considered view in *Moffett* was that the legislation is intentionally silent upon the matter of personal circumstances; the absence of any mention is neither incidental nor accidental, but rather requires the Tribunal to disregard such circumstances. This interpretation and subsequent determination made by the Tribunal in *Moffett* has not been successfully challenged upon appeal. It has been followed in a number of subsequent cases. There is not any other binding, authoritative or persuasive interpretation or authority causing this tribunal to take a different view on the facts of this specific case.
10. Completion Notices may be served in “new-build” property matters. If these are legally-effective, the statutory effect is that there is deemed effective completion by the specified date (whether or not any such are actually completed). Accordingly, the tribunal's focus must be upon whether or not any such “new-build” can,

objectively assessed, reasonably be expected to be completed within the specified period. The report of Jayne McFaul RIBA, uncontroverted as it is by the appellant, is quite conclusive in the matter. The tribunal's determination is that the Completion Notice served in this case is legally-effective and that the subject property could reasonably be expected to have been completed within the specified period of three months.

11. For these reasons, 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 dismissed, without further order.

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

**Date decision recorded in register and issued to parties:                      February 2016**