

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 5/14

MR ROBERT DICKSON - 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 appeal is dismissed.

REASONS

Introduction

1. This is a reference under the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant requested an oral hearing of his appeal. The matter was listed for hearing at Belfast on 31 March 2015 and the appellant appeared and represented himself at hearing, accompanied by a friend, Mr Richard Nicholls. The respondent was represented by Mr Martin McGrath MRICS, together with Mr Michael McGrady MRICS.
2. The appellant, Mr Robert Dickson, by Notice of Appeal (in Form 9) dated 17 April 2014, 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 81 Dickson's Hill Road, Drumdonnell, Ballyroney, Banbridge BT32 5AN ("the subject property"). A Completion Notice was issued and served in respect of the subject property dated 6 March 2013 specifying that the subject property could be complete by 4 June 2013. This Completion Notice was appealed by the appellant to the Commissioner of Valuation ("the Commissioner") and by Completion Notice Commissioner's Certificate dated 25 February 2014 the Commissioner's decision was to determine that the Completion Notice was deemed to be valid. As there were

no other issues raised in the case, the tribunal had to determine the appeal upon the basis of the evidence adduced and by the application of the relevant law to the determined facts.

The Law

3. 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, in the view of the tribunal, not necessary in this decision to refer in other than summary detail to the statutory provisions which bear upon the rating of empty homes which 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. Accordingly, 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, in addition to the oral evidence given by the appellant, are available from the appellant's appeal form (Form 9) and annexed schedule of builder's costs and the tribunal also considered the following documentation: -
- Presentation of Evidence dated 3 February 2015 prepared by Mr Martin McGrath MRICS on behalf of the respondent.
 - Copy Completion Notice of Appeal Report dated 9 June 2014 prepared by Jane McFaul RIBA, in respect of the subject property.
 - Copy Completion Notice Commissioner's Certificate dated 25 February 2014.
5. It was contended by the appellant and was fully accepted by the respondent to this appeal that the subject property was incomplete and that work was only progressing as funds became available to the appellant. The appellant gave clear and entirely forthright and credible evidence to the tribunal that construction of this building project had been progressing over a lengthy period of time as and when the appellant's personal finances and funding made that possible. It seems that construction commenced as long ago as 2004. The appellant had annexed to his appeal Form a schedule of costs from "FOH Builders" indicating a substantial list of itemised costings, which came to a total of £89,200. On behalf of the Commissioner it had been accepted that at the date of the Completion Notice the subject property was more or less in a wholly shell state, with all internal work still to be completed. It was helpfully indicated on behalf of the respondent that the following works still required to be completed: floor screeds, internal stud work and partition walls, first fix plumbing, first fix electrics, sheeting of ceiling and first floor, insulation, all internal plasterwork, second fix plumbing including bathroom and ensuite, second fix electrics, kitchen fitting and utility, second fix joinery including fitting staircase, guttering and downpipes, external drainage and permanent connection to water supply, erection of the garage, external ground work including external steps and ramps and painting and decorating. A report was available, included with the papers, from Jane McFaul RIBA concerning a "timeline", on a week by week basis over a three-month period, for the various works requiring to be completed and identifying in this "timeline" the stages by which these were deemed as capable of being completed. When questioned in a little detail by the tribunal concerning this report from Jane McFaul RIBA, the appellant very forthrightly did not take issue with the timeline which indicated that all of the works mentioned could be completed within the identified period of three months specified in the "timeline". The appellant did not endeavour to argue that completion within that period was entirely impossible, but merely asserted that his financial situation did not permit the work to be carried out within that period of time. Accordingly, the report from Jane McFaul RIBA was useful and, as such, was not controverted by the appellant. This concession by the

appellant greatly simplifies matters and thus directs the tribunal's focus to the proper interpretation and application of the statutory regime and to a consideration of whether or not the appellant's personal circumstances, including the appellant's financial circumstances, are properly to be taken into account by the tribunal in determining this appeal, under the relevant statutory provisions. There was also no challenge made to the capital value in this case.

6. On behalf of the respondent it was contended that there was no scope in the legislation to allow the individual's personal circumstances to be taken into account and the tribunal was expressly referred on behalf of the respondent to the tribunal's earlier decision in the case of *Neil Moffett –v- COV [NIVT 15/12]*.

THE TRIBUNAL'S DECISION

7. This is a further case where there are highlighted the particular circumstances of an individual who, until the implementation of the statutory “unoccupied premises” provisions would have encountered little difficulty with a self-build project conducted over a relatively lengthy period of time, as and when time and means permitted. If it had not been for the advent of the 2011 Regulations, the progression of work and eventual rating of the subject property would have very probably not given rise to any issues. However, 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 service of the Completion Notice and upon deemed Completion upon the relevant day. As has been mentioned in the Commissioner's Presentation of Evidence, this Tribunal has earlier dealt with a number of cases of this nature; the case of *Neil Moffett –v- COV [NIVT 15/12]* was one such case. The determination of the Tribunal in cases of this type is such as is set out in some detail in *Moffett*.
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. He has very fairly and very forthrightly conceded that the timeline stated in the report from Jane McFaul RIBA is possible and achievable, but he has also stated that to achieve this he would need to engage additional labour and he would need to incur substantial additional costs. He states that that is just not financially possible for him, given his present situation.
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. In that respect the report of Jane McFaul RIBA, uncontroverted as it is by the appellant, is useful and is indeed persuasive and conclusive in the matter.
11. 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.

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

Date decision recorded in register and issued to parties: