

**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 16/17**

**MR STEPHEN SCOTT- 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: 16<sup>th</sup> 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 Stephen Scott by Notice of Appeal dated 2<sup>nd</sup> October 2017 and received by the Office of the tribunal on 10<sup>th</sup> October 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 123 Old Cullybackey Road, Galgorm Parks, Ballymena, BT43 5PB ("the subject property").
3. The Appellant's Notice of Appeal was received by the Secretary of the Northern Ireland Valuation Tribunal (NIVT) on 10<sup>th</sup> October 2017. The President of the Northern Ireland Valuation Tribunal granted an extension of time to the Appellant (with no objection from the Respondent) to Appeal pursuant to Rule 9 (2) and Rule 26 of the Valuation Tribunal Rules (Northern Ireland) 2007. I refer to the Order of the Tribunal dated 17<sup>th</sup> October 2017.
4. On 29<sup>th</sup> June 2017 a Completion Notice issued in respect of the subject property, specifying that the remaining work should be completed by the completion date

namely the 27<sup>th</sup> September 2017 pursuant to Article 25B and Schedule 8B to the 1977 of The Rates (Northern Ireland) Order 1977.

5. On 20<sup>th</sup> July 2017 Mr Scott lodged an appeal against the completion notice. Ms McElhatton MRICS inspected the property on 25<sup>th</sup> August 2017 on behalf of the Commissioner of Valuation. The Appeal case was closed on 1<sup>st</sup> September 2017, the Land Property Services deeming the Completion Notice to be valid. On 2<sup>nd</sup> October 2017 Mr Scott submitted an appeal to the NIVT.

## **The Law**

6. 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**

7. The following documents have been considered by the Tribunal:-

- (a) The Notice of Appeal against the valuation for rating purposes (Form 9) dated 2<sup>nd</sup> October 2017.
- (b) Order of the Tribunal extending the time limit for appeal dated 17<sup>th</sup> October 2017.
- (c) Completion Notice Commissioners Certificate dated 1<sup>st</sup> September 2017.
- (d) Presentation of Evidence by the Commissioner of Valuation, Seline McElhatton, dated 23<sup>rd</sup> January 2018.
- (e) Copy correspondence sent by the Office of the Tribunal to the Appellant.

## **The Evidence and Submissions by the Appellant**

8. The Appellant, in his Notice of Appeal, states that he wants an extension to the completion notice in respect of 123 Old Cullybackey Road, Galgorm Parks, Ballymena, BT43 5PB as he cannot complete the following work within 3 months as:
  - a. The finished floors are not fit for purpose as the installation company's recommendation is for a minimum drying period of 7 weeks before the fit-out of the property can commence.
  - b. There is no kitchen or sanitary ware fitted.
  - c. There are no stairs to enable first floor access to the bedrooms and bathroom.
  - d. Only temporary electricity connection from outside the construction is in use and no water or drainage installed.
  - e. Mr Scott further states that the subject property is a new self-build property which has never been occupied and is being managed by him. Mr Scott therefore requests that a further exclusion be applied, owing to the nature of a self-managed project. Furthermore as a self-builder owner, the timescales of this project is longer due to the waiting times on professional construction tradesmen which Mr Scott asks to be borne in mind.

## **The Evidence and Submissions by the Respondent**

9. Under Article 25b and Schedule 8b of the Rates (Northern Ireland) Order 1977 a completion notice can be served on a new building if the Department considers that the outstanding works could reasonably be completed within a three month period.
10. Ms McElhatton sets out the description of the subject property in her Presentation of Evidence dated 23<sup>rd</sup> January 2018. By reference to photographs of the subject property she states the following:-
  - *Subject Property Description*
  - Post 1990 Detached House (1.5 storeys)
  - Estimated floor area of 258 sq m (access not gained to first floor)
  - Cavity block construction, render and stone clad finish
  - Pitched slate roof
  - Integral garage of 40 sq m with store of 30 sq m (estimated).
11. Ms McElhatton comments that at date of inspection (25<sup>th</sup> August 2017) the property was wind and water tight, with rendered cavity block walls (stone cladding to part), pitched slate roof, double glazed windows in PVC frames and external doors in place. The electrics were at first fix and first fix plumbing was underway. 80% of the internal plastering was finished and sub floors were complete. The property will be connected to mains water and electricity. Applications for connections had not been made by the Appellant at date of inspection. Sewerage will be to a septic tank (within site curtilage). The tank and pipework had not been installed but at date of inspection, it was anticipated that this would be completed by end of October 2017.
12. In relation to Appellant's grounds of appeal Ms McElhatton comments:-
  - (i) ***-The drying out of the finished floors, no kitchen/sanitary ware or stairs***

I refer to the property in Robert Dickson (Appellant) v Commissioner of Valuation NIVT 5/14 where

*“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 en-suite, 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.”*

*It is considered that the subject is at a more advanced stage of construction than the property in the above Dickson case where the Tribunal held that that the remaining work could be completed in three months as specified in the Completion Notice. Ms McElhatton therefore is satisfied that the outstanding works could be completed by the Completion Date.*

**(ii) - Temporary electricity connection and no water or drainage installed**

*In relation to the lack of services, mains water and electricity are available but permissions not yet applied for. The drainage system is to be a septic tank. I am of the opinion that the necessary works and connections could reasonably be completed within the 3 month completion notice period.*

**(iii) - Self-build/self-managed project which has resulted in longer waiting times for tradesmen**

*Ms McElhatton refers to the ruling of Neil Moffett (Appellant) v Commissioner of Valuation for Northern Ireland (Respondent) NIVT 15/12 where the Tribunal stated:*

*“In the determination of this point, the Tribunal’s view is that the legislation is intentionally silent upon the matter of personal circumstances and thus any such personal circumstances are not properly to be taken into account. If personal circumstances were properly to be taken into account, express provision would have been made in the legislation to that effect. This interpretation or construction of the statutory provisions provides the 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.”*

13. It is therefore clear that the Department cannot take into account Mr Scott’s personal circumstances i.e. that he is a self-builder, resulting in longer waiting times for tradesmen.
14. Mr Scott may, however, be entitled to a Developer’s Exclusion from rates liability for a 12 month period from the completion date (27/09/2017) or until occupation date, if earlier.

## **Summary**

15. It was therefore considered by the Respondent that the outstanding works could reasonably have been completed within the 3 month period and by the completion date of 27<sup>th</sup> September 2017. Therefore the completion notice is considered valid.

## **Decision of the Tribunal**

16. 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 personal circumstances of the Appellant a relevant consideration in accordance with the relevant statutory authorities of Article 25B of 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) Personal circumstances of the Appellant***

17. It is noted that the main contention of the Appellant in his Notice of Appeal is a new self-build and is a self-managed project. As a self-builder owner, the timescales of this project is longer due to the waiting times on professional construction tradesmen.

18. In this connection I refer to two decisions in which the law in regard are 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*.

19. 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:-

*“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.*

*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.*

*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.”*

20. The tribunal concurs with this interpretation and whilst recognising the personal difficulties of the Appellant, states that as a matter of Law that his personal circumstances cannot be taken into account when adjudicating on this appeal and concur with the respondents observations in this regard.

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

21. 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.
22. Whilst the evidence in the case could certainly have been fuller and more comprehensive, there is sufficient evidence provided by both the Appellant and the Respondent to adjudicate this matter. In this regard the Tribunal would request that all the expert witnesses appearing before the NIVT carefully consider and follow 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. The President stated inter alia in Moffatt at paragraph 21 that “*The tribunal would have anticipated an internal inspection to be undertaken by the Department at an identified date*” (this was completed in this case) “*and sufficiently detailed and specific estimations or observations upon outstanding construction and finishing matters. 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.*”
23. Notwithstanding the above observation, on the facts of this case (and, leaving out of the reckoning the Appellant's personal 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 Property Services the Presentation of Evidence by the expert witness Ms McElhatton and also the view of this Tribunal and in particular Tribunals expert member Mr McCormick MRICS that the remaining work, (notwithstanding the personal circumstances of the Appellant) which is not a relevant consideration under the statutory framework), could have been reasonably expected to be completed within three months.

24. The Respondent has correctly referred the Tribunal to *Robert Dickson (Appellant) v Commissioner of Valuation NIVT 5/14*. In the *Dickson* case 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. I refer to paragraph 10(i) of this decision above and compare the state of the property in the *Dickson* case and the factors enumerated in both the Appellant's evidence at paragraph 8 and in the Respondents evidence at paragraphs 11 and 12. The Tribunal concur with the view of the Respondent that the subject property is at a more advanced stage of construction than the property the *Dickson* case. The Tribunal is therefore satisfied that the outstanding works could be completed by the Completion Date.
25. 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.
26. The Tribunal do note the comments of the Commissioner of Valuation that the Appellant may be entitled to a Developer's Exclusion from rates liability for a 12 month period from the completion date namely the 27<sup>th</sup> September 2017 or until occupation date, if earlier, and this is a matter that the Appellant may wish to pursue further with the relevant authorities.

**Signed: Stephen Wright Chairman**

**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties: 17<sup>th</sup> January 2019**