

**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 29/14**

**MR WILLIAM ALLEN - 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 his son, Ian Allen. The respondent was represented by Mr James Martin MRICS, together with Mr Michael McGrady MRICS.
2. The appellant, Mr William Allen, by Notice of Appeal (in Form 3) dated 25 September 2014, appealed to the tribunal. The appeal raised certain technical difficulties and the tribunal sought clarification both from the appellant and also from the representatives appearing on behalf of the respondent. It appeared to be the case, from an examination of the content of the appeal form used by the appellant (as opposed to the precise nature and intention of Form 3 itself) and the associated documentation and also from hearing what the appellant had to say at the oral hearing, that the appellant's contentions included an endeavour to challenge the Completion Notice which had been served, in accordance with the pertinent statutory provisions, in respect of a hereditament situated at number 18 Hunter's Hill Road, Loughans, Gilford, Craigavon, BT63 6AJ ("the subject property"). The facts are that a

Completion Notice was served in respect of the subject property in March 2013, providing 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 Commissioner’s Certificate dated 24 July 2014 the Commissioner’s decision was to determine that the Completion Notice was deemed to be valid. As has been mentioned in the Presentation of Evidence submitted on behalf of the respondent, there has been some confusion in the case emerging between two quite separate issues. The first of these issues is the validity of the Completion Notice and the second issue relates to the validity of the assessed capital value concerning the subject property. There was also some compounding confusion, it would appear, engendered by the subject property being erroneously removed from the valuation list by the District Valuer. However, that seemingly erroneous removal was soon rectified and the subject property was reinstated in the valuation list; apparently an explanation and an apology was afforded to the appellant in respect of that error. On account of the use of Form 3 by the appellant (as opposed to Form 9 which is the applicable form to use concerning Completion Notice appeals to this Tribunal) this appeal has been treated as a capital valuation appeal by the respondent Commissioner and evidence of comparables has been included in the Presentation of Evidence. It was explained to the tribunal that this was the reason for there being no specific evidence presented on behalf of the respondent concerning any Completion Notice issue, but rather any evidence from the respondent was of the same nature as that normally encountered in responding to a capital value appeal. It is however clear that the appellant’s contentions relate to the issue of the Completion Notice. Indeed the appellant, when questioned by the tribunal at hearing, made it quite clear that he did not seek to challenge the capital value ascribed to the subject property but, rather, that he sought to raise issues concerning his financial circumstances and also issues relating to the fact that there was an intention to transfer the site upon which the subject property was constructed to his son, but that this conveyance of the legal title to his son had not yet taken place at the date of hearing.

## **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 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.

The tribunal feels that it is not necessary in this decision to refer in other than quite summary detail to those other statutory provisions which bear upon the rating of empty homes, which provisions are included in the Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 (“the 2011 Regulations”). It is perhaps sufficient to say that 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 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 and by a son, Ian Allen, are available from the appellant’s appeal form (Form 3) with annexed colour photographs and the tribunal also considered the following documentation: -
  - Presentation of Evidence dated 15 January 2015 prepared by Mr James Martin MRICS on behalf of the respondent.
  - Copy letter dated 24 September 2014 sent on behalf of Mr Danny Kennedy MLA, for consideration by the tribunal.
  - Copy Completion Notice Commissioner’s Certificate dated 4 July 2014 and Commissioner’s Valuation Certificate dated 15 September 2014.

5. It was contended by the appellant and accepted by the respondent to this appeal that the subject property was at the date of the appeal and is still in the course of construction. The appellant gave clear and entirely credible evidence concerning the financial circumstances applicable both to his own situation and also to his son, on whose behalf he stated the subject property was being constructed, with the intention that his son Ian Allen and that Mr Allen's wife and his young family would move into the subject property upon completion. The appellant also made it entirely clear that he did not seek to challenge the capital value specifically. The reason the subject property had not been completed, he stated, related to the personal financial circumstances of the appellant and of his son, with the intention being that the appellant's son, Ian Allen, would sell his existing house, discharging any mortgage liability, and then that he would obtain a new mortgage in order to raise funding to finance the completion of any work required to finish off the subject property. In the respondent's Presentation of Evidence it was confirmed as accepted that the subject property was incomplete, but it was contended that the capital valuation was in tone with other similarly circumstanced properties.
6. The letter dated 24 September 2014 sent on behalf of Mr Danny Kennedy MLA alludes to some of the confusion that has applied to this case and proceeds to reiterate the appellant's concerns that the appellant's son, Ian Allen, was self-building on land adjacent to the appellant's home; that Ian Allen lived with his wife and three children at a different location and that they had a mortgage on their current property and that they had been unable to sell their home and then to remortgage in order to finish the subject property; therefore they had been building the new property in "drips and drabs", whenever financially possible. The MLAs letter mentions that there was no electricity (a temporary supply being taken from the appellant's adjacent home), no heating, no septic tank, no floors and no bathroom or kitchen in the property. Due to financial pressures on the appellant's son, this self-build could not be completed in the near future. It is contended in this letter that the subject property was definitely unrateable.
7. On behalf of the respondent it was noted that there was no scope in the legislation to allow for the individual's personal circumstances to be taken into account.

## **THE TRIBUNAL'S DECISION**

8. This is a further case where until the implementation of the statutory "unoccupied premises" provisions, such as are provided for in the 2011 Regulations, the subject property would very probably not have given rise to any significant issues or concerns. However, with the advent of rating of unoccupied domestic premises the subject property now potentially falls for inclusion within the rating list upon the service of the Completion Notice and upon deemed Completion by the relevant day specified. This Tribunal has earlier dealt with a number of cases of this nature (see for example *Neil Moffett –v- COV [ NIVT 15/12]*) and the determination of the Tribunal in such cases has been set out in some detail in the case of *Moffett*.
9. It has been the contention of the respondent that financial considerations are irrelevant to the determination. The tribunal fully understands and has considerable sympathy with the contentions made by the appellant and by his son and supported by the MLA in the letter. The appellant's contention is therefore that his personal financial circumstances and those of his son ought properly to be taken into account,

insofar as these affect the rate of progress, in practical terms, of the progression and completion of the construction and finishing of the subject property.

10. The respondent's contention is that, under the statutory provisions properly interpreted, the respondent is not permitted to take account of the individual's personal circumstances. Examining these contentions, it is clear that there is nothing expressly stated in the legislation concerning the taking into account of any individual's personal, financial, or other circumstances and the provisions are indeed entirely silent in that regard. The regime accordingly exists for the service of Completion Notices in respect of "new-build" properties and for deemed Completion of such properties under construction by a specified date (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.
11. As has been mentioned previously and in some detail in the case of *Moffett*, the tribunal's view is that the legislation is intentionally silent upon the matter of personal circumstances and that, for this reason, any such personal circumstances are not properly to be taken into account. Accordingly, the proper 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 stipulated.
12. Notwithstanding the degree of confusion apparent in this case, given the necessary interpretation which must, irrespective of the appellant's personal circumstances and those of his son, be applied by the tribunal to the case, the tribunal's determination is that the appellant has not successfully challenged the Completion Notice and the subsequent upholding of the Completion Notice upon appeal by the Commissioner, nor has the appellant in any way challenged effectively the capital valuation.
13. For these reasons the appeal cannot succeed. Accordingly, the tribunal's unanimous decision is that the appeal is dismissed.

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

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