

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 31/14

MR NOEL CORRY- APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Stephen Wright

Members: Mr Eric Spence MRICS and Mr Peter Sommerville

Hearing: 18th April 2018 - Belfast

DECISION

After careful consideration of all the evidence 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 ("2007 Rules"). The appellant Mr Corry represented himself and the Commissioner of Valuation, the respondent, was represented by Ms Bennett together with Mr McGrady MRICS.
- 2.** The appellant, Mr Noel Corry by Notice of Appeal dated 10th October 2014 appealed to the Northern Ireland Valuation Tribunal (NIVT) against a completion notice, issued (in accordance with the statutory provisions, mentioned below) in respect of site 22B Killinchy Road Comber BT23 5LU ("the subject property").
- 3.** The appellants Notice of Appeal was received by the Secretary of the NIVT on 14th October 2014. Mr Flanigan, Legal Chairman of the NIVT granted an extension of time to the appellant pursuant to Rule 9 (2) (d) and Rule 26 of the "2007 Rules" to extend the time to deliver a Notice of Appeal. I refer to the Order of the Tribunal dated 27th September 2015.
- 4.** On the 11th September 2013 a Completion Notice issued in respect of the subject property pursuant to Article 25B and Schedule 8B to The Rates (Northern Ireland) Order 1977 stating that the work could be completed within 3 months and that the Completion date was the 10th December 2013.

5. Mr Corry lodged an appeal against the Completion Notice issued by the District Valuer. Ms Harte MRICS (hereafter referred to as either Ms Harte or Mrs Quinn) inspected the property on the 13th February 2014 on behalf of the Commissioner of Valuation (COV), deeming the Completion Notice to be valid. On the 25th February 2014 the COV held that work required to be done on the subject property could reasonably have been completed by the 10 December 2013 and that the rates liability would commence on the 10th December 2014. On the 10th October 2014 Mr Corry submitted an appeal to the NIVT.
6. The Capital Valuation assessed on the subject property was initially assessed as £275,000 by the District Valuer, however the subject property was removed from the Valuation List on the 4th September 2013 (effective from the 31st March 2009) and the said Completion Notice served on Mr Corry. The Appellant represented himself at the hearing and Ms Gail Bennett represented the Commissioner for Valuation and presented the evidence on behalf of Mrs Collette Quinn.

The Law

7. 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, 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

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

1. Notice of Appeal 10th October 2014 and attachments.
2. Letter dated 3rd September 2014 from W H Stephens – re an inspection of the subject property.
3. Letter from Wood Products Direct 10th August 2014.
4. Letter from Noel Corry to Land & Property Services 3rd February 2014.
5. Letter dated 2nd October 2013 to COV from Mr Corry with photographs attached.
6. Letter from the Courts Tribunal Service 11th November 2014 with regard to the time limit to extend Mr Corry's appeal.
7. Letter dated 31st October 2014 from the Land Property Services (objecting to the acceptance of the appeal).
8. Letter from Mr Corry dated 19th November 2014 to Mr Bowen of the NI Valuation Tribunal with attached photographs.
9. Letter from Mr Corry dated 4th July 2013.
10. Letter from Land Property Services to Mr Corry 4th September 2013.
11. Valuation Certificate issued 4th September 2013 – effected date 31st March 2009 (Valuation £275, 000, stating property removed from valuation list 31st March 2009).
12. Letter and District Valuers Completion Notice to Mr Corry from the Land Property Services received 16th September 2013 and considered on the 10th December 2013.
13. Completion Notice – Commissioners Certificate 25th February 2014 (stating that COV have considered the validity of a completion notice and that it could reasonably be completed 10th December 2013. States the date for completion is 25th February 2014 – liability to come into effect on the 10th December 2014).
14. Letter to Colin Bowen from Michael McGrady for COV 2nd December 2014.
15. Letter from Colin Bowen NIVT 5th December 2014 (he will examine the specific reasons put forward for delay and the date of Mr Corry's appeal).
16. Letter dated 15th January 2015 from Colin Bowen to Mr Corry.
17. Letter from Mr Corry to Mr Bowen 20th January 2015 (which he confirms he received the papers on the 5th July 2014).
18. Letter from Mr Bowen NIVT to Mr Corry 6th August 2015.
19. Letter from Mr Corry to the NIVT 11th June 2015.

20. Letter from Mr Corry to Mr Bowen of NIVT 22nd August 2015 re – extension of time limit for the appeal.
21. Letter from NIVT 4th September 2015.
22. Order of NIVT 27th September 2015 extending the time for the notice of the appeal.
23. Presentation of Evidence 1st August 2016 by Collette Quinn with attached photographs.
24. Letter from Mr Corry responding to Presentation of Evidence dated 30th August 2016 attached with the letter from R Topping and Sons Plastering.
25. Email 2nd February 2017 from Gareth Neill, LPS enclosing response to appellants’ comments on LPS presentation of evidence by Collette Quinn of 31st January 2017.
26. Response by appellant Mr Corry to NIVT dated 6th March 2017 received on the 7th March 2017.
27. Letter dated the 30th June 2017 from Mr Corry to the NIVT received on 29th June 2017, seeking a response to correspondence of the 6th March 2017.
28. Letter from the NIVT dated 19th July 2017 to Mr Corry.
29. Email from Garth Neill, LPS dated 28th July 2017 – further response to appellant’s observations 7th July 2017 and comments dated 30th June 2017.
30. Letter from NIVT to Mr Corry dated 1st August 2017.
31. Substantive reply from Mr Corry dated 5th October 2017.
32. Email from Gail Bennett 10th January 2018.
33. Letter from NIVT to Mr Corry 11th January 2018.
34. Hearing notice for 14th March 2018 issued to Mr Corry on 23rd January 2018.
35. Hearing notice for 18th April 2018 issued to Mr Corry on 22nd March 2018.

Subsequent to the hearing the following documents were submitted to the NIVT

36. Letter dated 8th May 2018 from Mr Corry to the NIVT.
37. Response to Mr Corry from the NIVT dated 24th May 2018.
38. Email to Respondents dated 22nd May 2018.
39. Response from LPS re timeline (*Dickson v COV* Ref: NIVT 5/14) dated 23rd May 2018.
40. 2nd May - Statutory assumptions and observations received from LPS.
41. 4th May – NIVT wrote to Mr Corry re his telephone conversation.
42. 12th June 2018 –Letter from Mr Corry to NIVT received on 18th June 2018 with attachment entitled ‘item 3 Grounds for Appeal’ and a copy of a letter dated 10.8.14 from Woods Products Direct.
43. 14th June 2018 Letter from Mr Corry received on 18th June 2018 with an attached letter from R. Topping and Sons dated 24th May 2016.
44. 28 June 2018 Letter from NIVT to Mr Corry.
45. 2 July 2018 Letter from Mr Corry to NIVT.
46. 5 July 2018 Letter from NIVT to Mr Corry.

9. This has been a protracted matter for different reasons ranging over a period of 4-5 years caused by delay occasioned by all sides. The COV on its part has apologised for its part in the delay.
10. It is observed that Mr Flannigan (Legal chairman) made an order as far back as 27th September 2015 pursuant to Rule 9 (2) (d) and Rue 26 of the Valuation Tribunal Rules (NI) 2007 on an application of the appellant that time is extended to deliver a Notice of Appeal.
11. Whilst there are other matters that have arisen during the course of these proceedings that have been fully set out in writing and at the hearing between the Appellant and Respondent. The fact at issue that the Tribunal is required to determine is, was the Notice of Completion issued requiring the work to be completed within 3 months valid. This is this issue that the Tribunal has focused its attention.

Background to the Appeal

12. Article 25b and Schedule 8 of the Rates (Northern Ireland) Order 1977 (inserted by Article 5 and schedule 2 of the Rates (Amendment) (Northern Ireland) Order 2004) makes provision for the Department to serve a Completion Notice on the owner of a newly erected or structurally altered building, determining the date when the building can be reasonably expected to be complete for inclusion in the Valuation List.
13. On the 1st day of October 2011 the Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 was brought into effect. This regulation relates to the exercise of powers conferred by Article 25A (6) of, and paragraph 1 (1) - (3) of Schedule 8A to, the Rates (Northern Ireland) Order 1977(a) and prescribes that completion notices may be served on private dwellings.
14. The subject property was first entered in the valuation list as a vacant house in 2009, at a time when vacant homes were not liable to rates. In July 2013 the appellant, Mr Corry received a rates bill for the subject property which was backdated to October 2011 (when the rating of empty homes was introduced). Following a complaint issued by Mr Corry, the list entry was removed and a completion notice was served with a completion date of 10/12/2013. A further complaint from Mr. Corry was treated as an application to appeal the completion notice and the decision of this appeal was that outstanding works to the property could be completed within three months and therefore the completion notice was deemed valid. Mr Corry then made a further appeal to the Northern Ireland Valuation Tribunal.

CHRONOLOGY OF REPRESENTATIONS

15. As the representations have been voluminous in this case. I have set them out in chronological order with the following three headings: Pre-hearing, At The Hearing and Post the Tribunal Hearing. The paragraphs referred to in the chronology refer to the relevant paragraphs of this decision.

PRE HEARING

- (i) Representations of the Appellants and Notice of Appeal dated 10 October 2014 (paras 16-19).
- (ii) Representations by the Respondent and Presentation of Evidence dated 1 August 2016 (paras 20-24).
- (iii) Written Response to the Presentation of the Evidence dated 1 August 2016 by the Appellant, dated 30 August 2016 (para 25).
- (iv) Further Response by the Respondent on Appellants Comments dated 30th August 2016 on Ms Quinn's Presentation of Evidence, dated 31st January 2017 (para 26).
- (v) Further Response by the Appellant to the Respondents representations of the 31st January 2017 dated 6th March 2017 (para 27).
- (vi) Response by the respondents to appellants comments dated 31st January 2017 forwarded by email dated 27th July 2017, (para 28).
- (vii) Further response by the Appellants to respondents' submission's dated 5th October 2017 (para 29).
- (viii) Response by the Respondent dated 10th January 2018 (paras 30- 31).

REPRESENTATIONS AT HEARING 18 APRIL 2018

- (ix) Representations and evidence by the Respondent at hearing. (paras 32-40)
- (x) Representations by the Appellant at hearing (paras 41-53).
- (xi) Closing submissions by the Appellant and Respondents (paras 54-58).

FURTHER SUBMISSIONS AFTER THE HEARING

- (xii) Further submissions by the Respondent dated 22nd May 2018 (paras 59-61).
- (xiii) Response to submissions by the Appellant dated 14th June 2018 (para 62).
- (xiv) Further submission by the Respondent on the applicability of the statutory Assumptions to case involving Notice of Completion. (Paras 63-64).
- (xv) Further submissions by the Appellant on the applicability of the Statutory Assumptions to case involving Notice of Completion (Para 65).

(xvi) Decision of the Tribunal (Paras 66-92).

Representations of the Appellants and Notice of Appeal dated 10 October 2014

16. The Appellant in his *Notice of Appeal* 10 October 2014 states that he cannot complete the work within 3 months required by the Completion Notice in respect of site 22B Killinchy Road Comber BT23 5LU as he cannot complete the following work within 3 months, the Appellant fully sets out his grounds for appeal as follows:-

1. Mr Corry states he is a retired professional business and qualified trades person who for over fifty years worked allied to the building industry and during the latter twenty-five years he has estimated and supervised countless contracts of various trades within that industry. This vast experience makes him only too aware of the amount of time required for trades people to complete many parts of a new build property and in this case the appellant believe the LPS valuers have got it wrong to suggest that this property could be completed within a three month period from 11.9.2013 which equates to approximately sixty working days based on a standard builders five day, thirty seven hour working week

2. The Appellant also believes the judgement of the LPS valuers may have been 'clouded' on the day of their second visit 13.2.2014 as on their original pre-arranged visit 30.1.2014 to this new build site they attended with no health and safety clothing and had to be denied entry which didn't go down to well. When working one of my jobs was as a health and safety representative dealing with staff, the public and risk assessment etc on a daily basis and as such Mr Corry states that he was only too aware of the implications to all parties in the event of an accident where a mandatory stipulation exists. Mr Corry wrote to the valuer (copy enclosed) pointing out these facts and also stating why access to the site had to be denied on the day.

3. At the LPS valuer's next visit the 'vibes' were not good and the Appellant believed the outcome was a foregone conclusion and this was despite him questioning Ms Harte about the build facts as detailed in his letter of appeal to the LPS.

4. In the extract of the letter dated 2 October 2013 from the Appellant to the COV Mr Corry states :-

“In your correspondence it states that the above property is now complete or can be completed within three months and I have to wonder where this incorrect information was obtained from.

This is as you are well aware from my formal complaint letter to the LPS and correspondence to LPS valuer a self-build on going retirement project cottage with most of the works being carried out by myself alone and the property as previously stated in the above letters is currently only 30/40% completed. You will also be aware from your enquiries that it has taken me six years to get the structure to its current stage so how could it ever be regarded as complete with approximately 60% of the work still to finish before it could be deemed habitable.

As an old age pensioner I am self-building our own retirement cottage for our latter years and the property has been substantially upgraded insulation wise from the original plans at considerable expense and additional build time to give a greener and more environmentally friendly property and also considering the information that the LPS have already been provided with about this property and what is available to them from other government departments at the press of a button, to suggest that the property is complete or could be completed within three months. I believe the LPS letter constitutes harassment and I also feel discriminated against as a senior citizen who is trying to build a retirement home by myself and it's apparently not being completed as quickly as the LPS would like although I am not aware of any time frame on a new build property.

To make it very clear and to reiterate the details of the property you already have, undernoted is the current condition of the build.” There are no services i.e. mains water, mains electric etc, the property is a bare shell inside with mainly unfinished block walls and only partly constructed stud work to the first floor, the main bedroom is only partly floored, there are no stairs, no sanitary ware, kitchen, plumbing or heating and the list goes on and on, and most of it hasn't even been 'first fixed'. Externally the property is not fully sealed as the recently installed lounge bow window roof is not weathered, there are no steps formed up to the access doors and the necessary disabled ramp has yet to be constructed and as a separate entity all the ground work has to be done, It's currently a typical building site, with approximately 60% of the work still to finish, how could this property ever be deemed complete when in reality on myself build basis it's years away from being

habitable let alone being finished. As you have gathered from the above details the information provided to yourselves by others ref this self-build property being complete or nearly completed is totally inaccurate and premature and I request that the completion notice is rescinded forthwith” (emphasis by the appellant)

5. The Appellant then continues, in his Notice of Appeal stating that after the inspection Ms Harte confirmed to him that the details of the build as provided in the letter were correct. The Appellant further states “*As my professional opinion and that of the LPS could be regarded as bias he approached (in the view of the appellant) probably one of the most respected and long standing companies in the building field of chartered quantity and building surveyors WH Stephens with representation throughout the British Isles and Ireland for an independent assessment of the current state of the new build property.*”

6. The Appellant further states “*a team of senior representatives spent over two hours inspecting the property with dozens of questions asked about same and I enclose their report. This inspection was carried out on 7 August 2014 and considering nearly six months of additional works had been carried out on the new build since the LPS valuers second visit, to me it confirms my thoughts and observations on the day of their visit.*”

7.” After concerns raised by the building inspector about adequate head height at one point on the proposed stairs and also the proximity of the stairs to the front door when stepping off the bottom riser I was asked for a modification to the original layout. Plans were drawn up for a considerably more complicated in manufacture of a twisted staircase again in solid oak open treaded pattern as per the original submitted drawings. I recently approached a local joinery workshop with the plans for their consideration of the manufacturing time for the stairs and associated components and enclose their reply.”

8. The Appellant also enclose a selection of photographs taken at the time of the LPS valuer's visit clearly showing the state of the building.

17. The Appellant further adduced in evidence, presumably with the consent of the author a Report, by an established firm of Chartered Quantity Surveyors and Chartered Building

Surveyors, namely WH Stephens. In his professional opinion he sets out a time frame of between 4-6 months for the work to be completed.

“On Instructions from you, we have undertaken an inspection of the dwelling at 22B Killinchy Road in order to assess the degree to which the dwelling is completed and capable of occupation.

Our reports should be taken as a general comment upon the condition of the structure, services installation, fabric and finishes within the property and not an inventory of every single element.

We have outlined in our reports the restrictions in the survey where we were unable to gain access. Our inspections were carried on -7th August 2014 when the weather was dry.

In accordance with our Standard Practice, we confirm that this report is for the stated purpose and intended for the addressee only and consequently this practice cannot accept any Third-Party Liability for the whole or any part hereof.....

The premises consist of a two-storey dwelling, with the upper floor accommodation housed in the roof structure. The building is of traditional load-bearing construction, supplemented by steel elements and has a cut timber roof finished in concrete tiles.

The walls are of cavity masonry construction, finished in facing brick with panels of random rubble walls. There is a partial solid section, however the ground floor and first floor are generally of a timber suspended type construction

The external windows and doors are of PVC.

The roof is substantially complete and weather tight, there is a small section, over a bowed window to be completed

The walls are complete and weather tight

The windows and doors are installed.

Internally, the floors are largely complete but

There are no finishes installed. There is a section of floor deck to be completed in one of the main bedrooms.

The walls are part plastered to the majority of the ground floor. To the first floor, there are extensive areas of walls with no plasterboard. There are no plastered areas to the first floor.

The main building fixtures are not in place, namely the bathroom fittings or kitchen units. There is no staircase present and access is via a ladder to the first floor.

The heating system is incomplete. The pipework would appear to be in place, however, there are no radiators and partial under floor system is not complete.

There is no mains water supply to the premises. Water is available by a temporary supply from the adjacent house

The Electrical supply is not connected, and power is drawn from the adjacent house.

The Electrical installation is partially complete. The degree of completion is variable. There are areas where the second fix is complete, yet there are extensive areas where First Fix is incomplete, particularly to the First floor Areas.

Externally, the site is enclosed by a timber fence. There are sections of existing bitmac paving present, however the majority of the area is finished in hardcore.

The entrance steps and those to the Conservatory and Kitchen are not complete. making it difficult to access the premises.

In conclusion, we would suggest that the premises are not currently capable of occupation.

We would further suggest that works required to make the premises capable of occupation could be completed by a competent small size contracting firm, within 4-6 months subject to final level specification.

We would, however, note that the work is being undertaken as a self-build project. It is therefore difficult to assess a time frame for making the building capable of occupation, due to variable pace of construction, which is dependent on the time and financial constraints.

We enclose a selection of photographs of the building.”

18. The Appellant further referred to a letter dated 10 August 2014 from Wood Products Direct in respect of a Manufacture of oak stairs in which Mark Gillespie states

“Having studied the drawn plans to manufacture solid oak stairs with open treads I can confirm the lead time to supply would be approximately four months post-date. Please note, the estimated supply date is subject to change due to any unforeseen circumstances.”

19. Throughout his written representations that the Tribunal have considered all of the appellants correspondence.

Representations by the Respondent and Presentation of Evidence dated 1 August 2016

20. In the *Presentation of Evidence* dated 1st August 2016 outlines and refers to the Respondent outlines the Appellants grounds of Appeal:-

“Mr Corry is a self-builder who has been building this house for his retirement. His original letter of appeal dates 02/10/13 stated that works had been ongoing for 6 years and were expected to continue for some years yet. This letter also stated that the property was only 30%-40% complete and due to the fact that it was a self-build project, was years away from it being habitable.

In addition to his subsequent appeal to NIVT, Mr Corry has submitted a report on the state of the property which was carried out by WH Stephens on 03/09/2014. This report concluded that ‘the premises are not currently capable of occupation and we would further suggest that the works required to make the premises capable of occupation could be completed by a competent small size contracting firm, within 4-6 months subject to final level specification.’

Mrs Quinn on behalf of the COV comments as follows:-

Article 25b and Schedule 8 of the Rates (Northern Ireland) Order 1977 (inserted by article 5 and schedule 2 of the Rates (Amendment) (Northern Ireland) Order 2004) makes provisions for the Department to serve a Completion Notice on the owner of a newly erected or structurally altered building, determining the date when the building can be reasonably expected to be complete for inclusion in the Valuation List.

The personal circumstances of the appellant i.e. fact that the subject property is a

self-build project and the construction period is significantly longer than what would be considered normal cannot be taken into account and in the case of *Neil Moffett –v- COV (NIVT 15/12)*, Mr James V Leonard, President of the Northern Ireland Valuation tribunal stated as follows:

“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 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, reasonable be expected to be completed within three months.”

This demonstrates that the test is considered to be a physical test and not an economic test.

In the subject case it is therefore clear that the Department cannot take Mr Corry’s personal circumstances into account, including the length of time it will take to reach full completion.

Mrs Quinn also refers to the NIVT decision in the case of *Robert Dickson v COV (NIVT 5/14)* which concerned a property of approximately 235 m², in a wholly shell condition and which was constructed over a period in excess of 10 years. The decision was to dismiss the appeal against the Completion Notice served and it was stated that *‘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.’* In this case, the exterior of the house was substantially complete. However, the interior of this somewhat larger house was, in my view, in a less complete state than the subject of this appeal.

21. Mrs Quinn describes the subject property as follows: -The subject property is a detached 1.5 storey dwelling of block and stone cavity wall construction with pitched tiled roof and integral garage. A full inspection was carried out on 13/02/14 and the property, which, at this time Mr Corry stated to be approximately 1800 sq ft, was found to be in a weather tight state with fully functioning walls, roof, windows and external doors in place. Some works were required to the roof of the front bow window but in terms of the overall property, this was considered to be minor. Internally, the following works were outstanding:

- Floor finishes to be laid.
- Plastering to be completed (mainly parts of first floor).

- Some internal joinery works to be completed (including installation of permanent staircase).
- Complete partially installed electrics.
- Connection to mains services.
- Heating system to be installed.
- Kitchen units and bathroom fittings to be installed.
- External site works including steps and disabled ramp.
- Painting and decoration.

22. In her summary the respondent states “*In my view, the main building work was substantially complete at the date of inspection and it is my opinion that the outstanding works could reasonably have been completed within a period of three months. The completion notice was therefore correctly served and the completion date (10/12/2013) as given is considered reasonable.*”

23. Enclosed in the documentation of this case are two other relevant documents. First a Notice of Completion from the Land Property Services (marked received on the 16/9/2013) “stating that in respect of the subject property that that the LPS considers that the work on the above building is now complete, or can reasonably be expected to be completed within three months.” It further states that the LPS regard the Completion date to be 10-12-2013. Mr Corry appealed this determination to the COV.

24. Also before the Tribunal is the Completion Notice Commissioners Certificate issued by the Commissioner of Valuation dated 25th February 2014. The said certificate states that the COV “has considered the validity of a Completion Notice which deems that the property could reasonably be completed on 10/12/2013”.The Certificate further states that the “work could be completed within 3 months and the appellants circumstances (the fact that this is a self-build) cannot be taken into account-completion notice valid 12 month exclusion applies and rates liability will commence 10/12/14”

Written Response to the Presentation of the Evidence (1 August 2016), by the Appellant, dated 30 August 2016

25. The Appellant on the 30 August 2016 in a 4 page reply states inter alia in his reply to the Presentation of Evidence sets out his response by reference to the headings given by the Respondent in the *Presentation of Evidence*.

1 “Outline of Appellants grounds of Appeal”

Mr Corry states that work has been going on at the new build property for six years. He states that Mrs Quinn omitted to mention that this was due to stress and anxiety caused, in his view, by the LPS premature intervention of this build. Mr Corry states that he has been very ill as notified to the LPS complaints manager Mr Clydesdale which resulted in visitations to his doctor and a referral to another specialist. During this ongoing situation I was unable to work, dedicated or liaise along with others prolonging the build.

The property as stated by Ms Quinn was only 30-40% completed a percentage not disputed by the LPS further agreed by Ms Hart at the site visit on the 13th of February 2014 so with 60-70% of all works required to complete it really does bring into question the three months completion notice which only equates to 60 working days based on a standard working week.

In view of the three-month completion notice and the percentage of agreed work still to complete I contacted WH Stephens a long-established company. The appellant then refers to the evidence of Mr Stephens as detailed above this decision at paragraph at 16 above. The site visit by Mr Stephens was on the 7th of August 2014 and (not 3.09.2014 as per Mrs Quinn's statement) and took approximately two hours with two senior representatives attending numerous questions were asked of the appellant and it certainly different greatly from Ms Harte's eight minute survey with only one question asked by her.

W H Stephens survey of the new build came approximately 11 months after the issuing of the LPS completion certificate yet despite this time lapse and the amount of ongoing works that was completed in this period at the property they stated it would take approximately a further 4-6 months for completion by a competent small building firm.

Ms Harts visit on the 13.02.2014 came about five months after the completion notice was issued during this time extensive works were carried out in the property by ourselves and others (details of some are listed separately) yet despite this no interest was shown by Ms Hart or her colleague on the day of the visit, nor were any questions asked about any previous works during this period.

The Appellant submits that for a true assessment these details would have to be taken into account and why did it take so long after the issuing of the completion notice and his appeal to have the subject property surveyed?

The appellants submissions is that his assessment of Ms Hart visit is based on his professionalism gained over 50 years in business, owning and running a successful company, dealing with other professional bodies, staff and the public on a daily basis.

2. “Respondents comments “

The appellant states that in this section of his response that “*Ms Quinn refers to “Two other legal cases presumably successful by the LPS and I believe it is extremely unprofessional of her to compare those to the present appeal. In all situations every case should be judged on its own merits and the evidence and fact provided by both parties .”*

3 “Description “

The Appellant states *The property is as described by the respondent. During Ms Harte’s survey her only question was based on her estimation of the property size, She asked is the property 2800 square feet. To which Mr Corry replied “no stating it was approximately 1800 ft.².*

The Appellant alleges that Mrs Quinn then goes on to *list nine items that were outstanding with little detail given, under noted is a more comprehensive overview.*

1. *The large bedroom had open joists and all flooring in this area had to be laid and secured, also insulation was required. The ground floor had only base flooring and required areas to be tiled and oak finish timber laid which could only be installed nearing completion of the property.*
2. *No plastering finished had been carried out to any of the first-floor rooms as the flooring and various stud walls were not installed. The larger main areas on the ground floor i.e. lounge and hall also required plastering.*
3. *Considerable first fix joinery works still had to be completed and all second fix works with the oak timber would be required as all the works progressed. Also, the solid oak staircase, banisters etc had yet to be manufactured and fitted as per the joinery workshop timescale as previously submitted.*
4. *Only minimal first fix electrics were installed especially to the first floor with those walls all requiring tracking for plugs and switches etc and on completion of other trades all second fix electrics were required throughout the house including the meter box.*
5. *All main services to be supplied and installed.*
6. *Some basic underfloor heating pipework installed only and virtually all plumbing work required.*
7. *As stated all including all associated plumbing works and tiling.*
8. *Full external finish site and ground works required including disabled ramp at etc.*
9. *As stated. (Mr Corry refers to painting and decorating)*

4. “Summary”

The appellant refers to the full contents of this letter (dated 30.8.2016) to go with previous letters and enclosures submitted to the Courts and Tribunal service.

The Appellant enclosed a separate document (*attached headed “Internal Works September 2013-February 2014 which provided details of extensive works carried out during the relevant period, (i.e. from the issuing of the completion notice to Ms Harte’s visit) none of it which was asked about or taken into account during her visit.*

In this document Mr Corry lists the internal works completed between September 2013-February 2014. He states *that over the five month period from the issuing of the LPS completion certificate in early September 2013 to Mrs Harts visit in mid-February 2014 the following work was carried out during that period, namely:-*

(a) the two solid floor areas were raised from the sub floor to a suitable height enabling the acceptance of 125mm Insulation ready for the under-floor heating pipe work. All underfloor heating pipework was installed in these areas with the supplies taken back to central point and water tested.

(b) Shower mixer fittings were installed in the bathroom and cloakroom tracked and recessed into walls together with associated services. Also water supply some wastes were installed in the cloakroom the sanitary ware, all in preparation for plastrons.

(c) As there were no floors laid upstairs basic heating services and electric cabling were installed to save re-lifting flooring at a later date.

(d) After the installation of insulated plasterboard to the ground floor ceilings the ground floor ceiling was insulated with 200mm glass fibre and most of the sheet floor of flooring was cut and laid and all screwed down, the large bedroom over the garage was left as this area had to be doubling insulated.

(e) Basic electrical works were carried out in the first floor ceiling, and this complete area was insulated with 400 mm installation and fully floored as per plan for heat retention.

(f) Alarm cabling was also installed for all these areas and terminated at a central location.

(g) The ground floor room walls were tracted as necessary and all switch and plug boxes installed with electrical cables.

(h) Plastering works were carried out to various rooms on the ground floor including ceilings with the lounge and hall omitted as these areas were not yet ready, the two solid floors also received the final screed over the underfloor heating to be finished floor level

.(i) A vapour barrier was installed in the sunroom ceiling and 400 mm of installation laid on same and all support batons or installed in preparation for the final oak timbers.

(j) These details, some of the internal works carried out during the five months delay period but it is not necessarily everything that was done.

Further Response by the Respondent on Appellants Comments (30 August 2017) to Mrs Quinn's Presentation of Evidence dated 31 January 2017

26. The respondent in her further response of the 31 January 2017 states that *her aim is to follow the order of the appellant's response to her presentation of evidence submissions* to the tribunal. This response was received on the 31st of August 2016.

1. "Inspection History"

The subject property would have been entered into the valuation list in 2009 on the basis of building plans provided to LPS by the local building control department at the relevant council, Ards Borough Council in this case. This was standard LPS policy at the time, using available information and measurements from another public body as opposed to duplicating this measurement process. As noted in her Presentation of Evidence the subject property was first entered in the valuation list as a vacant house, at a time when the vacant homes were not liable for rates.

2. "Completion Notice History"

June 2013: With the introduction of Rating of Empty Homes legislation October 2011, vacant properties on the valuation list became liable for rates. Subject property fell into that category and the rate bill was issued accordingly and backdated to October 2011.

4 July 2013: Mr Corry's letter was taken as an application to the District Valuer to review the Capital Value on the subject property. The central point to Mr Corry's correspondence focused on whether the subject property should have been entered into the valuation list. As

the property was in the list, the only way under the relevant legislation to consider Mr Corry's central concern was via the registration of a review case with the District Valuer.

The District Valuer reviewed the entry in the valuation list and issued a certificate on 4 of September 2013 removing the entry from the list, as the initial decision to add the property to the list was considered incorrect due to no Completion Notice having been served. As a consequence, this removed the liability for rates on subject property from October 2011 until the date of the District Valuer's certificate. An LPS member of staff called to inspect subject property on the 23rd of August 2013 after sending a letter on the 29th of July 2013 requesting to arrange the same. A calling card with contact details with was left at 22A on the same day. On the basis of this external inspection the subject property was considered Completion Notice ready.

11th of September 2013: Following the above external inspection on the 23rd of August 2013 a Completion Notice was served on the subject property, determining a completion date of the 10th of December 2013 (LPS Case reference 632 7989-0)

Notice was served on RN Corry 22A: Killinchy Road Comber BT23 5LU and confirmed as having been received on the 16th September 2013

3 October 2013: letter received by the COV submitted by RN Corry 22A: Killinchy Road. The appeal was subsequently registered against the Completion Notice being served. This decision was confirmed by certificate issued on the 25th of February 2014 on behalf of the COV.

October 2014: A late appeal against the Commissioner's decision was accepted by the Northern Ireland valuation tribunal.

3. "Outline of appellants grounds of appeal"

The respondent in her response sought to assure Mr Corry that neither she nor LPS intended to cause him any undue stress or anxiety over this matter. However it is her duty to apply the Completion Notice legislation as it currently stands and she considers that she has done so fairly in this case. Further she submits that her application of this legislation is now before the tribunal.

The appellant states that she understands the survey undertaken on Mr Corry behalf by W H Stephens and that it will be presented to the tribunal for their consideration.

The Respondent further responds by stating that the LPS endeavours to process all Completion Notice appeals to the COV as quickly as possible. Findings of her inspection remain as detailed in the description section of her presentation of evidence. Ms Quinn considers the details gathered during her inspection allied to her extensive professional experience of similar appeal cases was adequate to reach the conclusion (as outlined in Schedule 8B) that the work remaining to be done on subject property was such that the building could reasonably have been expected to be completed within three months.

4. “Respondents comment”

The respondent states in relation to comments on this heading by the appellant “*All appeals to the COV are judged on their own merits as no doubt are those before the NIVT. However, the appellant considers it would be extremely unprofessional of her when conducting similar Completion Notice appeals on behalf of the Commissioner to ignore previous NIVT decisions as a source of guidance. The **Moffat and Dickon** and **N I VT** cases are simply referenced to support the reasoning behind my recommendation and illustrate a consistency of approach by LPS to those difficult and sensitive cases.*

5. “Description”

The appellant states that as noted on her inspection of 13 February 2014 the subject property was in a weather tight state with walls, roof, windows and external doors all in place Mrs Quinn does not dispute the list of “outstanding” items detailed in Mr Corry’s letter dated the 30th of August 2016. However Ms Quinn would reiterate again, it is her professional opinion that the work remaining to be done on the subject property was such that the building could reasonably have been expected to have been completed within three months.

In the case of *Robert Dickson v COV* (NIV T5/14), the property in question was in a wholly shell state in that case it was determined that the three-month time frame was sufficient to complete floor screeds, internal stud work and partition walls, first fix plumbing, first fix electrics, sheeting of ceiling on first floor, installation, all internal plasterwork, second fix plumbing including bathroom and ensuite, second fix electrics, kitchen and utility room fitting, second fix joinery including fitting staircase, guttering and downpipes, external drainage, and permanent connection to a water supply.

Further Response by the Appellant to the Respondents representations (of the 31st of January 2017) dated 6th March 2017

27. The appellant on the 6th March 2017 makes the following responses *in accordance with the headings of Mrs Quinn's response of the 31 January 2017*

1 "Inspection history"

The Appellant states that from *his interpretation of this paragraph it appears the LPS based on a set of plans forwarded to them from the local council placed this property in April 2009 on the valuation list without a full site inspection and at the time of the building construction the roofers hadn't even completed the tiling.*

The LPS employee who placed this very early build status property on the rating list without a site inspection is the person responsible for all the trouble caused to the appellant and the numerous letters to and from the LPS and ultimately landing on the NIVT's doorstep. This should never have happened had the person involved been a bit more diligent in their job.

2. "Completion Notice History"

With the property placed prematurely on the rating list and unknown to himself the appellant states *my first knowledge of the situation was when a large rate bill arrived thus prompting my original letter of complaint of 4 July 2013 a copy of which is on the NIVT file.*

In the third paragraph of the section the writer Mrs Quinn has confirmed that the LPS had made a mistake placing this property on the rating list something I have stated all along in my correspondence to the LPS. It has taken over three and a half years from my original letter of complaint July 2013 for an LPS representative to "come clean" and admit they were wrong and admit a mistake and the reason given was "due to no completion notice having been served" and I have to ask why the LPS has decided to pursue the matter with such vigour to re-enter the property immediately back onto the rating list? Was it because they were proved wrong?

When the LPS realise their mistake and this is the first time it has ever been confirmed to me they should have resolved the situation and let things settle until the property was nearing completion but instead they set off again on a different tangent by issuing again without a site inspection a three-month completion notice, it was like a vendetta against myself are proving them wrong.

Also in this paragraph Mrs Quinn has suggested that I didn't respond to a letter issued on the 29th of July 2013. I did receive this letter from a Mr Ditchfield, Crown buildings Bangor

requesting access to the property and I responded by letter to him upon my return from holiday, however I heard nothing further from the person so I assumed he no longer required entry to the building. Both letters can be made available to the N I VT if required.

3 “Outline of a appellants grounds of appeal (wrongly numbered)”

The appellant refers to items numbered three and four” (Referring to the Respondents listed headings “3 Respondents comments and 4 Description”) and infers correctly that they should been numbered 4 and 5 sequentially. This appears to have been a typographical error

Mrs Quinn states that the LPS endeavours to process all completion notice appeal as quickly as possible and considering with my appeal it took over five months for a property inspection to be carried out since my application was made in September 2013-this excessive time delay with no LPS progress update in between really does highlight the inefficiency of this department of the LPS and is certainly not as Mrs Quinn claims and all adding additional stress and concern to the appellant.

“Items numbered three and four” (Referring to the Respondents headings “3 Respondents comments and 4 Description”-should have been 4 and 5 sequentially

The writer Mrs Quinn has portrayed her professionalism on various locations in her ‘POE‘and recent follow-up correspondence to the NIVT and I am sure in many circumstances that may be accurate.

However even the most professional of people and bodies can and will from time to time make errors of judgement, miscalculate or misinterpret the situation all of which can be regarded as a mistake.

Since the LPS became prematurely involved with my new build property there have been many mistakes made by various out LPS departments and their employees namely

1. The LPS wrongly added this property to the rating list in 2009-now admitted as a mistake.

2 There was never any property inspection but despite this it was given a completion notice immediately it was removed from the rating list in September 2013.

3 When the appeal was made against this completion notice it took a further five months before the property was inspected.

4 Ms Harte's original pre-arranged site visit on 30th of January 2014 together with her junior had to have entry declined due to her very unprofessional approach towards Health and safety site regulations, a copy of my letter to her re-same is on file with the NIVT

5 Ms Harte/Quinn's second visit on 13th of February 2014 took a total of eight minutes for the actual site inspection, with only one relevant question asked by her assistant re: the electrical wiring on the first floor, Ms Harte's professional examination of the inspector property area was 2800 ft.² and I had to inform her as close to 1800 square.

No other questions were asked about the property and there was no consideration given or asked re-the completed works in the manner in the previous five months since my appeal nor was there any consideration given or asked about as to what way the property was being finished in the inside or outside. This will be a very high specification built property both interior and exterior with everything inside being solid oak including the floors and exterior with everything inside being solid oak including the floors and the exterior is being fully paved with the installation of many thousand hand laid bricks, all of which is extremely time-consuming and labour-intensive. Such was the lack of interest shown by Ms Harte and her assistant on the day they never ever inspected the site /building to the sides or rear.

No property and grounds can be comprehensively inspected in eight minutes and in my opinion that visitation was a sham and the outcome was a foregone conclusion and possibly because of previous LPS and employees mistakes which the LPS as had been notified about.

6 As stated in my letter to Ms Harte dated 3.2. 2014 I spoke to her during the site visit re-the percentage of works completed in the property 30-40% and Ms Hart agreed in front of assistant this is correct, also mentioned in my correspondence the NIVT 30th of August 2016 under the heading "outline of the appellants grounds of appeal"

In view of both agreeing on the percentage of works completed and the property still requiring 60-70% of works yet to be completed

"Summary of evidence"

The appellant refers the NIVT to Ms Quinn's presentation of evidence and the heading "summary" where she states "the main building was substantially completed "based on the above fact the statement has been out of judgement on her part.

"No completion notice appeal certificate after that site inspection was ever received until

I wrote to the appeals department and the LPS complaints manager some four months later. I received the copy and have to question if the original was ever sent in the first instance as proof of posting could not be provided by the LPS.”

“Outline of Appellants grounds of appeal

The Appellant states, *in the third paragraph Mrs Quinn states that the LPS process all appeals as quickly as possible and I have to ask is a five-month delay from appeal to survey regarded by the LPS as quick? This type of delay causes undue stress to any appellant.*

“Items three (Respondents comment) and four (Description)”

The appellant states “Mrs Quinn seems intent to want to take what I regard as an unprofessional approach by involving other past cases and I really have to question how similar they really are to this current appeal given the detailed background of the LPS involvement in this build. In view of the LPS mistakes having an independent survey carried out on the property over five months,(after Mrs Quinn’s visit),by a firm of chartered quantity and building surveyors and despite all this additional work carried out in the building during that time ,the senior representatives disagreed with Mrs Quinn’s assessment of the build time to complete.”

“In view of Mrs Quinn trying to compare with others instead of concentrating on the facts are merits of this case I would request the full names and addresses of Moffett and Dickson who she has referred to and through investigation this would allow me to ascertain just how similar these cases really are to my own build and were the same mistakes made by LPS and were independent reports obtained in each case?”

Response by the respondents to appellants comments (31January 2017) forwarded by email dated 27 July 2017

28. On the 27th of July 2017 Gareth Neil, Senior Valuer of the Domestic Appeals Land and Property Services on behalf of the respondents replied to the appellants comments detailed at paragraph 27 above of this decision.

Mr Neil explained that his response followed the order of the appellants comments submitted to the NIVT.

“Re-22 B Killinchy Road, Comber”

1. Inspection History

Mr Neil refers inter alia to Mrs Quinn's comments in her letter of the 31st of January 2017 and then states:-

“The subject property was entered into the valuation list in 2009 without a site inspection on the basis of building plans provided to LPS by the local Building Control department of the relevant Council, Ards Borough Council. In the interests of efficiency and cost- saving this was the standard LPS policy at the time and pre-dated the introduction of the Rating of Empty Homes legislation in October 2011. The valuer responsible for this case was not treating the appellant differently from any other ratepayer.”

2. Completion Notice History

Mr Neil refers to Mrs Quinn's comments of the 31st of January 2017 and then states:-*“The LPS has accepted the initial decision to add the property to the valuation list was incorrect due to no completion notice having been served. An LPS member of staff had called to inspect subject property on 23rd of August 2013 after sending a letter on the 29th of July 2013 requesting to arrange same. A calling card with contact details was left on the same day. On the basis of this external inspection the subject property was considered Completion Notice ready. The LPS re-entered the subject property immediately back onto the Valuation List as it is the statutory duty of the COV to maintain an up-to-date list and the subject was considered Completion Notice ready. LPS strongly refutes the suggestion such action was a “Vendetta”.*

3. Outline of Appellants grounds of Appeal”

Mr Neill states The LPS apologise again for any undue stress and delays in processing this appeal and is keen for the matter to now proceed before the NIVT at its earliest convenience.”

4. “Items three (Respondents comment) and four (Description)

“The issues of whether LPS made an error of judgement, miscalculation or misinterpretation in this case is now before the NIVT and LPS will accept the decision in the matter.”

In relation to other comments Mr Neill refers to Ms Quinn's Presentation of Evidence, the respondent refers to the decisions of the *Moffat* and *Dickson* cases and gave them access to the on-line links.

At sub point 6 the respondent states that in Mrs Quinns absence I cannot comment on the verbal exchange/agreement but refer to Mrs Quinn's comments on her comments of the 31/1/17, section four and the Description and those comments made in the summary section of her presentation of Evidence.

At sub point 7 the respondent states that records show a Valuation Certificate was issued to the Appellant on 25/2/14 notifying the Commissioners decision on appeal.

Regarding the appellants offer to compromise and the three points listed Mr Neill responded as follows:-

“1. The LPS apologises for the delay in processing this appeal and any undue stress caused. LPS has accepted the initial decision to add the property to the valuation list was incorrect (a mistake) due to no completion notice having been served.

2 If the NIVT decide LPS was incorrect to re-enter the subject in the valuation list in 2013 then a full refund of any overpayment and rates will be issued accordingly. LPS cannot offer any refund other than in the circumstances.

3. Other than issuing yearly accounts, LPS does not normally write to or visit any domestic property unless initiated by the ratepayer or advised of alterations by Building Control. Given Mr Neills response to point 2 above LPS cannot accept appellants proposed compromise and consider the matter is best brought to a conclusion by proceedings to hearing at the NIVT at its earliest convenience”

Further response by the Appellants to the respondent’s submissions dated the 5th of October 2017.

29. The Appellant raised issues of delay that concerned him and then inter alia responded under the headings of issues as follows:-

1. “Inspection history”

The Appellant states “it is now very obvious in this instance that the placing of the new build property on the rating list by an office worker apparently at any stage of the early construction is very inappropriate without a full inspection as this case testifies with the LPS having to admit they had made a mistake, all of which started off my rightful complaint”

The appellant further states “Mr Neill has stated this was done “in the interests of efficiency and cost saving”, where is the cost saving when in this instance it has been proven the LPS were wrong? And taking into account the very considerable time and resources of LPS employees having to deal with this mistake in correspondence alone over a four-year period and still are ongoing,”

2. “Completion notice history”

The Appellant further states *“Mr Neil has raised the issue of the LPS sending me a letter dated 29th of July 2013 and I would refer the NIVT to the fourth paragraph of my correspondence dated the 6th of March 2017 on the above heading where I confirmed receiving this letter from Mr Ditchfield, Crown buildings, Bangor and I replied back to Mr Ditchfield by letter and receive no further correspondence from him re-access to the property, so from this one can only conclude access wasn’t important to him as possibly it had been pre-arranged for the property to be placed back into the rating list anyway. Mr Neill has stated that an external inspection was carried out on the property and I really have to question what exactly could anyone see except the roof and upper windows of one side of the house. For Mr Neil’s reference and the NIVT I would point out that this is a very secure and locked high solid gated site bound by an eight foot high dense hedge on the roadside and the rest of the site is surrounded by double thickness vertical staggered timbers with no vision through same, eight inches wide and up to seven feet tall. So unless the LPS employees came equipped with a van carrying ladders, steps or trestles which would have to be erected on property not belonging to the site only very limited part external vision of the property is possible and in view of this and the distance the boundary fence is away from the building no truly professional person or persons could ever rightfully come to the conclusion that the property was “completion notice ready” based on this type of so-called inspection as stated by Mr Neil unless they had a wonderful imagination and powers of vision far beyond normal.”*

3. Items numbered 3 and 4 -Sub-point Point 6

The appellant states that having *“been in the same position and business on several occasions requiring taking over a contract/job from someone else I am only too aware of the involvement and this can be compounded when all previous correspondence has not been fully read and the stated facts understood as in this case meaning that all the points raised cannot be addressed. In point 6 Mr Neil glances over the very important question at the percentage of work still to complete in the building and grounds at the time of Ms Harte’s /Quins visit in February 2014 which is all documented and correspondence to the LPS and NIVT so again for the benefit of Mr Neil and highlight it to the NIVT undernoted on the facts of this skipped over item.*

The percentage of building work in the process of being completed have been mentioned to the LPS prior to Ms Harte’s initial visit in January 2014 also in my letter of concern to Ms Hart re-her lack of site health and safety in the letter of the 3.2.14. I stated that I will be going through with her on her next visit 13.2.14 the accurate build facts of the property. This notice was given to Ms Harte purposely in advance of her visit thus allowing a time to consider the

issue. After Ms Harte's eight minutes internal inspection I discussed with her the percentage of work completed 30/40% and Ms Hart agreed with me in front of her assistance that this was correct. The figure of 60/70% to complete was also mentioned in my letter to the LPS 18.6 and 31.8.2014 and also in my letter to the NIVT 19.11.2014 was also raised in my reply to Ms Harte/Quins presentation of evidence page 2 paragraph one 30.8.2016.

This was an accurate assessment of the works completed/left to complete in the building agreed by Ms Hart and myself during her inspection and over the years of correspondence has never been disputed so it really does bring me into question the accuracy of the completion certificate time limit placed on the property in September 2013 which equates to approximately 60 working days based on a standard building working week and also bearing in mind that Ms Hart visit wasn't until five months later. It also raises the question over the accuracy of Ms Hart statement in her presentation of evidence under the heading of "summary".

“sub point 7 -item 7”

The appellant referring to Item no 7 in the previous correspondence of the Respondent. “This is not a true statement by the writer, I was never issued with a valuation certificate on the 25.2.2014, this may have been raised internally but as previously stated the LPS cannot provide any proof of posting. I wrote to the LPS complaints manager Mr Clydesdale re-this matter and suggested that important documents for the reply time-limit should be sent by recorded delivery and I also pointed out that LPS mail does not have a return address on the outside of the envelopes in cases of non-delivery, disappointingly I received a very negative reply to my correspondence.

In the final paragraph of my letter dated the 6.3.2017 I requested the full names and addresses of Moffat and Dickson who Mrs Quinn referred to as a comparison. Unfortunately the blue highlighted section of Mr Neill's letter means nothing to me but it's figures and percentage symbol is, as I was never brought up with computers nor had the need to use them and I don't have access to the same.

The appellant asked again “for the details previously requested in the format I can readily understand and please include the full postcode as I intend to contact both these people to find out just how similar these cases are to my own based on Mrs Quinn's comparison, were the same mistakes made by the LPS and what independent report of obtained on the build by these people etc.....

Response by the Respondent dated 10 January 2018

30. Ms Bennett on behalf of the Respondent on the 10 January 2018 states inter alia that, LPS consider there are no new issues within Mr Corry's correspondence and therefore have no further comment. Ms Bennett indicated that LPS were keen for the matter to now proceed to the NIVT at its earliest convenience.
31. Noting that the Appellant does not have access to computer Ms Bennett attached hard copies of the Decisions in both the *Moffat* and *Dickson* cases.

AT HEARING REPRESENTATIONS BY THE RESPONDENT AND APPELLANT 18TH APRIL 2018

Representations at the Hearing of NIVT by the Respondent

32. The Tribunal convened on the 18 April 2018. The Chairman fully explained the purpose of the proceedings was to hear and determine this appeal against the COV in respect of a Completion Notice served on Mr Noel Corry.
33. At the commencement of the hearing Mr Corry indicated that he had certain difficulties in hearing. Mr Corry was immediately offered the loop system and indicated that he could hear all the parties clearly and thanked the Tribunal for their assistance.
34. On behalf of the Respondent, Ms Bennett with Mr McGrady presented the evidence in terms of Mrs Quinn's/ Presentation of Evidence which is set out in full at paragraphs 20 -24 of this decision which for the sake of brevity will not be repeated.
35. The Respondent gave evidence and fully opened the presentation of evidence to the Tribunal.
36. The respondent was firmly of the view that the work on the subject property could be completed within 3 months and that the appellants circumstance namely that this is a self-build, cannot be taken into account and referred to the cases of *Neil Moffett -v- COV* (NIVT 15/12), for the authority that "*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...*"
37. Ms Bennett again referred the Tribunal of *Robert Dickson v COV* (NIVT 5/14) which concerned a property of approximately 235 m², in a wholly shell condition and which was constructed over a period in excess of 10 years. The decision of that Tribunal was to dismiss the appeal against the Completion Notice served. Reference was made to the following

comments of the Tribunal in Dickson case ‘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.’ In this case, the exterior of the house was substantially complete. However, the interior of this somewhat larger house was, in the respondent’s view, in a less complete state than the subject property of this appeal.

38. Ms Bennett referred to the evidence of the subject property as set out above at paragraph 20-24 and referred to the time line of the property submitted on behalf of the COV in the case of *Dickson v COV (NIVT 5/14)*. In her submissions on behalf of the COV Ms Bennett acknowledged that no time line was available for the completion of works on the subject property of this case. However the Appellant states that the case of *Dickson* is relevant in that it demonstrates consistency of approach in assessing time given to work to be completed and that a time line could be produced that was submitted in the *Dickson* case.

39. In light of this the Tribunal referred Mr McGrady to Ms Quinn’s Presentation of Evidence at page 7 where she referred to the property as being in “*in a weather tight state with fully functioning walls, roof, windows and external doors in place*”. Mr McGrady was then asked to give his view in light of all the evidence before the Tribunal. Mr McGrady gave the time estimates as follows for the internal works as follows:-:

- Floor finishes to be laid.- Mr McGrady replied that the floors had been completed
- Plastering to be completed (mainly parts of first floor)- **2- 3 days**
- Some internal joinery works to be completed (including installation of permanent staircase) Mr Grady stated that depending on the finish **1 - 2 weeks**
- Complete partially installed electrics - **2 weeks**
- Connection to mains services. - **1 Week**
- Heating system to be installed. - **1 week**
- Kitchen units and bathroom fittings to be installed.- **2-3 days**
- External site works including steps and disabled ramp - **2-3 weeks**
- Painting and decoration -**2 weeks**

40. Ms Bennett referred to the conclusions of Mrs Quinn MRICS that in her professional opinion the main building work was substantially complete at the date of inspection and in her opinion “that the outstanding works could reasonably have been completed within a period of three months”. The Completion Notice was therefore correctly served and the completion date (10/12/2013) as given is considered reasonable.

Representations at the Hearing by the Appellant on the 18th April 2018

- 41.** The appellant, Mr Corry presented the evidence in terms of his written evidence which are fully set out at paragraphs 16-19 of this decision which for the sake of brevity will not be repeated.
- 42.** Mr Corry states he is a retired professional business and qualified trade's person who for over fifty years worked allied to the building industry and during the latter twenty five years estimated and supervised countless contracts of various trades within that industry. This vast experience makes him only too aware of the amount of time required for trades people to complete many parts of a new build property and in this case he contended that the LPS valuers have got it wrong to suggest that this property could be completed within a three month period from 11.9.2013 which equates to approximately sixty working days based on a standard builders five day, thirty seven hour working week.
- 43.** The Appellant stated that the time frame given by Mr McGrady was ridiculous and that this matter had not been dealt with in a professional manner.
- 44.** Mr Corry indicated that it was difficult to get another builder due to the very high specification of the property.
- 45.** The Appellant again stressed in his view the brevity and quality of Inspection ("No property and grounds can be comprehensively inspected in eight minutes") and delay in this matter by LPS and the COV by Mrs Quinn. These have been fully documented above at different times in his written submissions and also the delay in this matter.
- 46.** The Appellant again stressed that the subject property is only 30/40% completed. And that it had taken him six years to get the structure to its current stage so how could it ever be regarded as complete with approximately 60% of the work still to finish before it could be deemed habitable.
- 47.** The Appellant stated that Ms Harte at the inspection of the subject property acknowledged that 60%-70% remained to be completed.

48. The Appellant also emphasized that some extra work would be required as he wanted a more environmentally efficient property.
49. In light of the repairs at the time of the visit there were no services i.e. mains water, mains electric etc, the property is a bare shell inside with mainly unfinished block walls and only partly constructed stud work to the first floor, the main bedroom is only partly floored, there are no stairs, no sanitary ware, kitchen, plumbing or heating and the list goes on and on, and most of it hasn't even been 'first fixed'. Externally the property is not fully sealed as the recently installed lounge bow window roof is not weathered, there are no steps formed up to the access doors and the necessary disabled ramp has yet to be constructed and as a separate entity all the ground work has to be done, it's currently a typical building site.
50. The appellant contended that in relation to the cases of *Moffett -v- COV* (NIVT 15/12), and *Dickson v COV* (NIVT 5/14) they were not comparable to his case.
51. The appellant stated that the case of *Moffett -v- COV* is authority for the proposition that personal circumstances are not properly to be taken into account. In the case of *Moffett* the subject property was delayed by a lack of finances. In this case Mr Corry finance is not an issue to this build as in respect of the property he is building there is an “*an open cheque book*”.
52. In relation to the case *Dickson v COV* (NIVT 5/14) the Appellant states that in his view the respondent should not use this and other cases as a comparator but should concentrate on the facts and merits of this case. Further he reiterated his request for the full names and addresses of *Moffett* and *Dixon* so that he could ascertain just how similar these cases really are to his own build and work the same mistakes.
53. The Appellant again referred to the report of W H Stephens professional opinion which set out a time frame of between 4-6 months for the work to be completed. This is fully set out at paragraph 17 above. In relation to the outstanding work to be completed.

Closing submissions by the Appellant and Respondent

54. The Appellant in his closing submissions indicated that this matter should have been sorted out prior to these proceedings. That 60%-70% of the work could not be completed

within 3 months he again referred to the opinion of WH Stephens which gave a time frame of 4-6 months.

55. The Respondent referred to the evidence of Ms Harte that said the work could be completed within 3 months. In considering this the respondent stated that the statutory assumptions in the Rates (NI) Order 1977 should be applied to cases which involved properties where a completion notice had been served upon the owner.

56. The respondent referred to the statutory provisions set out in the Rates (Northern Ireland) Order 1977 (“the 1977 Order”) as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (the 2006 Order”). Article 54 of the 1977 Order enables a person to appeal to this Tribunal against the decision of the Commissioner on appeal regarding the capital value.

57. Schedule 12 of the 1977 Order as amended states as follows:

“7(1) subject to the provisions of this schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in Paragraphs 9-15, the hereditament might reasonably expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date.

The presumptions set out in Paragraphs 9-15 of the Rates (NI) Order 1977.

Paragraph 12 states-(1) states that one of the assumptions is that “*The hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality.*”

58. Ms Bennett stated that this presumption applied to cases involving Completion Notice and that this is based on the statutory assumption that the subject property which is subject of a Completion Notice applies in respect of the nature of its completion namely that the subject property has only to be brought up to standard of “average state of internal repair” not that it had to be built to a high standard.

POST HEARING REPRESENTATIONS BY THE RESPONDENT AND APPELLANTS

Further submissions made after the Tribunal hearing by the Respondent 22nd May 2018

59. In considering this case further the Tribunal subsequently requested the Respondent to submit the Time Line in relation to this instant case. Ms Bennett subsequently indicated that there was

no time line available and that the time lines referred to in Ms Bennett's submissions related to the case of *Dickson v COV*, Ms Bennett replied as follows:

"The response aims to answer the points raised in the email forwarded by the tribunal centre on 22nd of May 2018.

*The timeline that was referred to at the hearing was in reference to the scale of remaining works on the property in the case of *Dickon v COV (NIVT5/14)*. A timeline was provided to illustrate the program of works and timescales involved to complete (see attached.)*

In that case, it was held by the tribunal that the three months' timeframe was sufficient to complete floor screeds, internal stud work and partition walls, first fix plumbing, first fix electrics, sheeting of ceiling and first floor installation, all internal plasterwork, second fix plumbing including bathroom and ensuite, second fix electrics, kitchen and utility room fitting, second fix joinery including fitting staircase, guttering and downpipe's, external drainage and permanent connection to a water supply. The three-month timescale also included the erection of a garage and completion of external ground works, including external steps/ramps and painting and decorating.

60. The time frame helpfully provided in tabular form in the *Dickson case* gives a cumulative time of 12 weeks for the work to be completed and was assessed as follows:-

*Ground and 1st Floor stud walls, partition insulation and partition plaster board - (weeks 1, 2, 5 and 6) – a total of **4 weeks.***

*First and second fix heating and floor screeds - (weeks 2, 3, 6 and 7) - a total of **4 weeks.***

*First and second fix electrics and power supply - (weeks 3, 4, 8, 9 and 10) - a total of **5 weeks.***

*First and second fix plumbing - (weeks 2, 3, 7 and 8) - a total of **4 weeks.***

*First and second joinery and staircase - (weeks 2, 3, 5, 6 and 7) – a total of **5 weeks.***

*Sheeting first floor and plaster and ceiling insulation board – (weeks 4 - 7) a total of **4 weeks.***

*Internal Plaster and skin - (weeks 4 - 8) – a total of **5 weeks.***

*Gutters and downpipes, external drainage and septic tank - (weeks 1, 5, 6 and 8) - a total of **4 weeks.***

*External ground works, steps and ramps - (weeks 7 - 9) - a total of **3 weeks.***

*Garage - (weeks 1-9) – a total of **9 weeks.***

*Kitchen and utility and painting and decoration - (weeks 10 - 12) – a total of **3 weeks.***

*Commissioning and other miscellaneous items - (weeks 11 - 12) - a total of **2 weeks.***

61. The respondent states that the LPS are of the opinion that the subject property is a similar size to that in the *Dickon case* and was at a more advanced stage of completion at the date of issue of

the completion notice. The Respondent considers it reasonable that the subject property could also have been completed within a three month period, from the date of the Completion Notice being served.

Response to submissions made by the Appellant dated 14th June 2018

62. On the 14th of June 2018 the appellant sent this response in relation to the timeline sent by the COV. The appellant comments as follows:-

“The Dickson Hill Road property has been raised before as a comparison by Ms Quinn I don’t believe either Ms Bennett or Ms Quinn have ever visited this property as I have stated in previous correspondence to the NIVT all cases should be taken on their own merits and not compared to past cases with a differently designed property.

The Dickon Hill property is of a very standard two storey construction with concrete block inner and outer leaf walls, solid floors standard sized cavities, and window frames set out on concrete sills with standard glazing panels. The heating system has normal radiators and doesn’t appear to have any under floor heating, the roof structure is of a simple design and traditional for a two storey house and I believe it correct to assume based on other factors the installation is to the minimum standard that prevailed when planning was sought.

In some of the documentation that was forwarded to me through the NIVT it appeared that financial restraints were prominent in this case and during the build and that together with other factors may still be present today as the property is still unfinished and nature is starting to claim back what is hers. Nothing of the above facts resembles or features in my property.

A storey and a half property is considerably more challenging and labour-intensive than a standard two storey similar to the Dickson Hill property, all the first floor rooms in my case are contained within the roof structure which is normally very steep 50 degrees or more, dormers and other roof lights are also contained/ formed within the roof structure and no rooms have straight ceilings or full walls. Wooden purlins, steel roof support beams and valley rafters all protrude into the ceilings and walls which have to be boxed and plastered in giving very considerable extra works for joiners and plasterers and these are only some of the differences and time-consuming factors between that of a two storey as against my property in question.

Taking plastering as an example, the plastering contract from my property amounted to £10,900 with approximately £3,400 for materials and £7500 for labour representing a nine week forty five day contract for a team of plasterers and had this been a standard property

the labour content would have been substantially reduced. The additional time on a property like mine is all spent on the first floor, due to the many angles of ceilings and walls built in wardrobes, cupboards and plastering around the various support beams etc. and because of expansion and contraction of various materials attached to the roof structure all areas have to be bonded first before plastering to help prevent cracking.

At the time of the issuing of a completion notice for this house September 2013 no plastering had been carried out in the property but during November and December 2013 the plastering commenced to some of these areas on the ground floor that were ready and the team of plasters were on site for 14 days. I refer the NIVT to the enclosure with my letter 30.8.16 from the plastering contractor detailing what was done at the time (enclosed).

Thirty one days are required to finish the internal plastering at the date and Ms Harte's visit/inspection in February 2014 and it certainly shows up Mr McGrady's very unrealistic and misleading plastering completion estimate given at the tribunal of 2 to 3 days, but then Mr McGrady did decline to climb the ladder to the first floor so he did not see for himself what exactly was involved or the area with open joists and no flooring etc.

Again Mr McGrady's estimates the completion of other work stated are equally incorrect and unrealistic for the 60-70% works to complete at the date of Ms Harts inspection. With my attention to detail I have kept notes of the hours, days and weeks of the many trades people.....

In relation to the plastering Mr Corry refers to a letter from R. Topping and Sons, plastering and cornicing contractors, dated the 24th of May 2016. He confirms that during the month of November and December 2013 considerable plastering and associated works were carried out in the subject property by his staff and Mr Topping details the work completed.

Further Submissions by the Respondent on the applicability of Statutory Assumptions to cases involving Notices of Completion

63. The Tribunal also invited submissions from the COV in relation to the applicability of statutory assumptions to the service of the Notice of Completion served on the Appellant in this case.

64. The COV responded as follows:-

“Article 25b and schedule 8 of the Rates (NI) Order makes provision for the Department to serve a Completion Notice on the person entitled to possession of a newly erected building. The Completion Notice determines when the building can reasonably be expected to be

complete for inclusion in the valuation list. When assessed for this inclusion, the property must be valued as per the statutory assumptions in schedule 12. Two of the assumptions are important in respect of this case.

*Firstly, the sale is envisaged with vacant possession-there is no specific occupier; secondly the house is in an average state of internal repair and fit out. The fit out is not therefore specific to any particular occupier, their requirements or preferences. It is to be considered to be **average** considering the age and character of the hereditament. The purpose of a completion notice is to deem the house complete, at the specified date-even if it is not-for the purposes of this hypothetical rating scenario.*

*The Notice confers the date at which time the outstanding work could **reasonably** have been completed; the Notice does not provide an instruction for the work to be completed. If the owner chooses not to do so within the timescale or to complete a higher specification of finish, beyond what is ordinarily reasonable, this is their personal choice.*

In the current case, the appellant's insistence on a bespoke stairway or particular materials in the kitchen is the right of the property owner but in doing so, he is creating circumstances beyond what is reasonable, as envisaged by the legislation. The extreme effect of accepting such an argument would be that the property may never be considered complete in terms of the legislation. This cannot be right or fair.

In the present case, the decision of the Commissioner determined that the house could reasonably be completed within three months which is in fact the maximum period. The test is if the house "can reasonably be expected to be completed within three months". This is the reasonability test. The Commissioner contends that delays due to acquiring specialist material of choice etc. is unreasonable if a more simple operation could have been effected prior to the completion date envisaged by the Notice."

Further submissions on the Applicability of Statutory Assumptions to cases involving Notices of Completion by the Appellant.

65. On foot of these being shared with the Appellant he replied with his observations on the 12 June 2018. Mr Corry reiterated many points already made in previous submissions but in relation to the points raised by the respondent he states inter alia as follows:-

At page 2 of his correspondence Mr Corry states. "In Ms Bennett's response letter she refers to two assumptions (paragraphs one to two) that are important in this case, firstly referring to vacant possession and no specific occupier, the LPS and NIVT are aware from all correspondence this property is a retirement property for ourselves and we will therefore be the

occupiers.

Also to address the second point at the date of the completion notice how could any LPS employee state “that the house is in average state of repair and fit out? When nobody from the LPS has seen inside the property, this is a totally incorrect statement. Ms Bennett then refers to the fit out and not being specific to any particular occupier, again incorrect as the LPS know there it is specific to ourselves.

Ms Bennett then highlights the words “reasonable and average” the former I have addressed above as an unreasonable and the latter I take great exception to as she has never been in the property therefore cannot make a true assessment. I have never worked to an average standard, the Oxford dictionary defines average as medium and that to me is well before the standard I and people I employ work to.

In paragraph three Ms Bennett states the purpose of a completion notice and when works could reasonably be carried out and this may apply if the LPS did their job correctly but in this case the property was never inspected/assessed prior to the issuing of the said notice.....

In paragraph four Ms Bennett refers to my ‘insistence on a bespoke stairway’ is a very untrue and inaccurate statement, obviously something she has made up as had she done her research prior to putting pen to paper Ms Bennett would be then aware that it was not me that instigated the modified staircase but the building inspector who requested the staircase to be altered as they were in breach of safety regulations and I would refer the NIVT to my original Appeal form 9 to themselves dated the 10 October 2014 and my typed correspondence under item three, fourth paragraph, (enclosed) this clearly states the reason why the modification was required, I would also refer the NIVT to my enclosure with form 9 from the timber manufacturing company with the timescale for the altered staircase.

Ms Bennett then picked up on the fact that I mentioned at the tribunal about the granite work tops and the fact that I had stated that we had purchased a slab of granite from India. This was chosen for its unique colouring and graining and I mentioned it as a point of detail not that it was going to prolong the kitchen installation.

A kitchen from a specialist manufacturing company designed to suit a one of property such as this takes eight to ten weeks from the first measuring site visit , showroom visit to select the doors, handles, types of units, cooker hood, appliances etc, then a costing layout drawing and when agreed this is then programmed into the manufacturers work schedule. The granite was ordered from the southern company at the same time as the kitchen and arrived in Ireland prior to the kitchen installation so no additional waiting time is involved as suggested by Ms Bennett. Only when the full kitchen is fitted can the granite importer laser measure the kitchen then cut and

polish the granite as necessary and install. In the final paragraph of Ms Bennett's response letter she states the Commissioner contends that delays were due to acquiring specialist material of choice etc. is unreasonable', but as I have explained above there was no delay in materials and the modified staircase was at the request of the building inspector so Ms Bennett has wrongly misled the LPS Commissioner by passing on incorrect information total lack of research and wrong assumptions.....

The estimated additional time by various trades for this additional works was 12 weeks and all this was done at my expense to achieve a greener environmentally friendly property with a lower carbon footprint also to reduce the reliance on fossil fuel wood burning stove was installed for area heat and also for the supply of hot water.... “

DECISION OF THE TRIBUNAL

66.Article 25b and Schedule 8B of the Rates (Northern Ireland) Order 1977 Order provides, in respect of completion notices, as follows: -.

Completion days

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.

The COV relies on Schedule 8B (1)- of the 1977 Order:

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.

67.There are three 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 Rates (Northern Ireland) Order 1977 when considering the applicability of a Notice of Completion served on the Appellant?*

(ii) *Do the Statutory Assumptions contained in schedule 12 of the Rates (Northern Ireland) Order 1977 apply to Notices of Completion?*

(iii) *Could the work remaining to be done be completed within the terms of Completion Notice namely within 3 months?*

(i) Are the personal circumstances of the Appellant a relevant consideration?

68.It is noted that the main contention of the Appellant in his Notice of Appeal is that the subject property 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.

69.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

70.In the case of *Robert Dickson v COV* NIVT 5/14. The president of the tribunal made comments at paragraphs 8 -10 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.

71. The tribunal concurs with this interpretation and whilst recognising in this case, unlike the *Moffett* case, that there appears to have been no financial difficulties on the part of the Appellant. The Appellant in his evidence before the Tribunal stated that he had an “open cheque book”, however the Appellant for reasons that are understood and with which the Tribunal empathise with namely his age and health stated that the subject property could not be completed with 3 months. The Appellant further states in a letter dated the 2 October 2013 “*With approximately 60% of the work still to finish how this property could ever be deemed complete when in reality on my self-build basis it's years away from being habitable let alone being finished.*”

For the reason as stated above, as a matter of Law these personal factors cannot be properly taken into account.

(ii) Do the Statutory Assumptions Apply to Notices of Completion?

72. The purpose of a valid Completion Notice is that the property will fall for inclusion in the rating list. The property under construction was a substantial property that the appellant stated would require longer than 3 months to complete.

73. During her closing submissions Ms Bennett referred to evidence that had been given by the Commissioner that the property could be completed within 3 months. Ms Bennett also referred the Tribunal to the statutory assumptions contained in schedule 12 of the Rates (Northern Ireland) Order 1977. Schedule 12 paragraph 7 defines Capital Value as “... *the amount which on assumptions mentioned in paragraphs 9-15 the Hereditament might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant valuation date*”, which I now set out:-

74. Schedule 12 of the 1977 Order as amended states as follows:

The statutory Assumptions are set out in Part I of Schedule 12 to the 1977 Order (basis of valuation),(as amended by the Rates (Amendment)(Northern Ireland) Order 2006 after paragraph 6 there shall be inserted the following paragraphs—

Capital value – general rule

7.(1) Subject to the provisions of this Schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in paragraphs 9 to 15, the hereditament might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date.

(2) In estimating the capital value of a hereditament for the purposes of any revision of a **valuation list**, regard shall be had to the capital values in that **valuation list** of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised.

(3) The assumptions mentioned in paragraphs 9 to 15 shall apply for the purposes of determining whether one hereditament is a comparable hereditament in the same state and circumstances as another with the omission of sub-paragraphs (2) and (3) of paragraph 12.

(4) In sub-paragraph (1) “relevant capital valuation date” means 1st January 2005 or such date as the Department may substitute by order made subject to negative resolution for the purposes of a new capital value list. (*emphasis mine*)

Capital value – the assumptions

8. In this paragraph and paragraphs 9 to 15—

“development” has the meaning given by Article 2(2) of the Planning Order;

“flat”, in relation to a building, means a dwelling which is a separate set of premises, whether or not on the same floor, divided horizontally from some other part of the building;

“incumbrance” means any incumbrance, whether capable of being removed by the seller or not, except service charges;

“permitted development” means development for which planning permission is not required or for which no application for planning permission is required;

“Planning Order” means the Planning (Northern Ireland) Order 1991 (NI 11);

“planning permission” has the meaning given by Article 2(2) of the Planning Order;

“rentcharge” has the meaning given by section 27(1) of the Ground Rents Act (Northern Ireland) 2001 (c. 5).

9. The sale is with vacant possession.

10. The estate sold is the fee simple absolute or, in the case of a flat, a lease for 99 years at a nominal rent.

11. The hereditament is sold free from any rent charge or other encumbrance.

12.—(1) The hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality.

(2) The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

(3) In sub-paragraph (2) “relevant date” means 1st April 2007 or such date as the Department may substitute by order made subject to negative resolution for the purposes of a new **capital value list**.

13. The hereditament has no development value other than value attributable to permitted development.

14.—(1) A hereditament falling (or deemed to fall) within any sub-paragraph of Article 39(1A) will always fall within that sub-paragraph.

(2) A hereditament falling (or deemed to fall) within paragraph (1B) of Article 39 will always fall within that paragraph.

15.—(1) There has been no relevant contravention of—

(a) any statutory provision; or

(b) any requirement or obligation, whether arising under a statutory provision, an agreement or otherwise.

(2) In sub-paragraph (1) “relevant contravention” means a contravention which would affect the capital value of the hereditament.

(emphasis mine)

75. Ms Bennett referred to assumption at paragraph 9 above “Vacant Possession” and paragraph

12(1) *“The Hereditament is an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality.”*

76. The submission on behalf of the COV is that these statutory assumptions should be applied when assessing whether the work on the subject property as to whether the work could be completed in 3 months. The contention is that the property should be brought up to an “an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality.”

77. The question is do these statutory assumptions apply only to properties that are already in the Valuation List or should the statutory assumptions be applied by a District Valuer, the Commissioner of Valuation and this Tribunal in issuing and assessing the validity or otherwise of a Completion Notice, with a view to a subject property being potentially included (future tense) in the Valuation List? The Appellant for the purposes of this Appeal is not challenging the Capital Valuation in his Notice of Appeal other than saying it is nil on the

basis that the subject property is not complete and there is no reference in the extensive interchange of correspondence in relation the assessment of Capital Valuation.

78. There is clearly a statutory regime in place which was recognised by the DV. In this case the DV initially put the subject property in the Valuation List and then subsequently recognising his error removed it from the Valuation list. The correct procedure was then followed, in that having assessed the subject property and come to the view that it should not be included in the Valuation List and in the LPS assessment of the subject property, served a Completion Notice in accordance with Schedule 8B 1(1) of the 1977 Order on the statutory basis that it appeared to the DV *“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.”* The Appellant for the purposes of this Appeal is not in essence challenging the Capital Valuation of the subject property.

79. The Tribunal observe that when a District Valuer is requested to make an Assessment of Capital Valuation that such an assessment is based on applying the statutory assumptions as set out above at paragraph 73, by reference to the Valuation List see Schedule 12 of Paragraph 7 (2) of the 1977 Order ,states that in *In estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments... .(emphasis mine)*

80. Schedule 12 (7) (3) of the 1977 Order requires that in cases of revision of a Valuation List *“regard shall be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances.”* This is known as the *“Tone of the List”* and in essence confirms that comparability is a cornerstone of the rating system. The Comparability of Rating Hereditament was described in the case of *Dawkins (VO) v Ash Brothers and Heaton (1969) 2 A C336* in which Lord Pearce stated *“Rating seeks a standard by which every hereditament in this country can be measured in relation to every other hereditament. It is not seeking to establish the true value of any particular hereditament, but rather its value in comparison with the respective values of the rest.”*

81. The view of the Tribunal is that the Capital Valuation exercise by the District Valuer in applying the statutory assumptions in assessing Capital Valuation is either for properties that have just been completed and a new Capital Valuation is being assessed , *or* a subject property that has a valid completion notice deemed date that has come to pass (and subject as in this case to a 12 month exclusion prior to an occupant becoming liable for rates as the subject property is a domestic property) *or* a subject property is already in the Valuation List and the subject property is being requested to be reviewed for the *”purposes of any revision of a valuation list”*. The statutory assumptions cannot be applied until the subject property building is

complete, deemed to be complete and is either about to be entered, (due to its state of completeness or deemed completeness), into the Valuation List or is already in the Valuation list.

82. In not applying the statutory assumptions to the assessment of a Completion Notice the respondent has expressed concern that if the statutory assumptions are not applied to the assessment of the work and time scale of a Completion Notice, (as the respondent alleges in this current case) in that the appellant's apparent insistence on a bespoke stairway or a particular materials in the kitchen that the owner of the subject property, (although the appellant strongly disputes this) is that that such an approach creates circumstances beyond what is reasonable, as envisaged by the legislation. The respondent contends that the extreme effect of accepting such an argument would be that the property may never be considered complete in terms of the legislation. This the COV contends cannot be right or fair. The Tribunal take the view that Schedule 8B 1(1) of the 1977 Order covers such eventuality in the "reasonability test" namely

"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."

83. The Tribunal take the view that the word "reasonably" does not connote a work being to such a high luxurious specification that such work may take an inordinate amount of time to complete but can the work be completed to such a standard that subject property is capable within 3 months of being fit for beneficial occupation.

84. The Tribunal Note that in the seminal cases of *Neil Moffett V Commissioner of Valuation for Northern Ireland NIVT 15/12* and *Robert Dickson v Commissioner of Valuation for Northern Ireland NIVT 5/14*, no reference is made to the said statutory assumptions as being applicable in assessing the validity of Notices of Completion, although it is noted that in those cases that the COV did not appear to have raised that issue before the said Tribunals.

(iii) Could the work remaining to be done be completed within the terms of Completion Notice namely within 3 months?

85. The view of the Tribunal is that primarily the issue is one simply of fact namely, could the work objectively assessed be reasonably being expected to be completed within 3 months. 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.

86. Whilst the evidence in the case could certainly have been fuller and more comprehensive in relation to a time line and work to be allocated within that time line, there is sufficient evidence provided by the both the Appellant and Respondent to adjudicate this matter. In this regard the Tribunal would request that all the expert witnesses in future cases before the NIVT for the Appellant or Respondents carefully consider and implement the 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.”

87. Notwithstanding this 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?

88. The Tribunal note that there is common ground between the Appellants witness and the Respondents witnesses that the work could be completed within three months. The evidence of the District Valuer, Mrs Quinn MRICS (Chartered Valuation Surveyor) for the COV, Mr Gareth Neill MRICS, Senior Valuer for LPS and Mr. McGrady, (Chartered Surveyor for the COV present at the hearing) state that the remaining work could be completed within 3 months. For the Appellant, H Stephens, Chartered Quantity and Building Surveyors states the work could be completed by a competent small size contracting firm within 4-6 months subject to final level specification.

89. There is a clear correlation between the reports of work to be completed detailed by Mrs Quinn (see paragraph 21 above) in her presentation of evidence and W H Stephens (see paragraph 17 above). A close comparison of the reports and the work detailed shows that Mrs Quinn's evidence and that of WH Stephens are virtually in agreement. Both Mrs. Quinn and W H Stephens agree that the subject property is weather tight and in relation to the 9 areas covered by Mrs Quinn these are all covered in W H Stephens Report .What is absent from both reports is a time line in relation to each component part of the work.

90. The Respondent has correctly referred the Tribunal to Robert *Dickson (Appellant) V Commissioner of Valuation NIVT 5/14*. In the *Dickson* case at that 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 17, (which details outstanding works itemized by WH

Stephens, on behalf of the Appellant) of this decision above. At Paragraph 21 above Mrs Quinn (on behalf of the respondent) details outstanding works to be completed and compare the state of the property in the *Dickson* case and the factors enumerated at paragraph 59 above. The Tribunal concur with the view of the respondent that the subject property is at a more advanced stage of construction than the property instanced in the *Dickson* case. A comparison of the work required in the *Dickson* case for a similar property detailed above at paragraph 59 and 60 above clearly demonstrates that as well as similar work to that of the subject property under consideration there was clearly additional work ,for example the ground and first floor stud walls, partition insulation and partition plaster board were still outstanding, gutters and downpipes ,external drainage and sceptic tank needed to be put in place and a garage was detailed to be built.

91. The Tribunal is therefore satisfied that the outstanding works could have been completed by the Completion Date.

92. 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: 7th June 2019