

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
RATES (NORTHERN IRELAND) ORDER 1977

IN THE MATTER OF AN APPEAL

VT/1/2019

BETWEEN

MARTIN McKAY & ROISIN McKAY – APPELLANTS

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: 45 Friary Road, Ballymoney

Lands Tribunal – Henry M Spence MRICS Dip Rating IRRV (Hons)

Background

1. On 23rd July 2012 the District Valuer served a completion notice on the property at 45 Friary Road, Armoy, Ballymoney (“the reference property”) which was owned by Mr Martin McKay and Mrs Roisin McKay (“the appellants”).
2. On 18th December 2012 the appellants lodged an appeal against the completion notice to the Commissioner of Valuation (“the respondent”) but the respondent upheld the District Valuer’s original decision to serve the completion notice.
3. Subsequently, on 15th February 2015, the respondent entered the reference property in to the Valuation List with a Capital Value rates assessment of £190,000. This was effective from 21st October 2012, the completion notice date.

4. On 13th April 2015, following a further appeal to the respondent, the Capital Value rates assessment was reduced to £175,000 as a 10% allowance was granted for “difficult access”.
5. On 29th June 2015 the appellants appealed the respondent’s decision to enter the reference property in to the Valuation List to the Northern Ireland Valuation Tribunal (“NIVT”) on the grounds that the reference property was incomplete and should not be valued for rates purposes.
6. The case was heard by the NIVT on 5th April 2017 and a unanimous decision issued on 10th May 2017, stating that the appeal should be dismissed. On 22nd May 2017 and 10th June 2017 the appellants wrote to the President of the NIVT requesting “leave to appeal” to the Lands Tribunal.
7. On 29th June 2017 the President issued his decision which granted the appellants leave to appeal to the Lands Tribunal, although there was some confusion as the covering letter attached to the President’s decision incorrectly stated that “the President has refused your application ...”.
8. Some significant time after, on 31st December 2018, the appellants subsequently submitted a Notice of Appeal to the Lands Tribunal. The Lands Tribunal Rules (Northern Ireland) 1976 (“the Rules”) require that any appeal is lodged within 28 days from the date of the grant of leave to appeal by the President of the NIVT. The appellants’ appeal was therefore 1 year, 5 months and 4 days out of time.
9. The respondent then raised a preliminary issue relating to the appellants delay in submitting their appeal to the Lands Tribunal and requested that if the appellants wished to proceed with their appeal they would first have to bring an application for an extension of time, as stipulated in Rule 12 of the Rules and stating their reasons for their non-compliance with the 28 day time limit.

10. The Tribunal agreed with the respondent and invited submissions from the parties, which was followed by an oral hearing on the preliminary issue.

Procedural Matters

11. The appellants were represented by Mr Martin McKay who appeared as a litigant in person. Ms Maria Mulholland BL instructed by the Departmental Solicitor's Office appeared for the respondent. The Tribunal is grateful to both parties for their submissions.

Position of the Parties

12. Following the decision of the President of the NIVT which granted the appellants leave to appeal, Mr McKay considered that they had been "vindicated" and there was no further action that the appellants required to take.
13. The Notice of Appeal form to the Lands Tribunal, Form AC, stated that "the time limits imposed by the Rules for giving notice of appeal may be extended in exceptional circumstances". The respondent's position was that the appellants had not come close to reaching the threshold of "exceptional circumstances" and the respondent invited the Tribunal to dismiss the appellants' application for an extension of time.

The Statute

14. Article 54A(1) of the Rates (Northern Ireland) Order 1977 ("the Rates Order") provides:

"Appeal from decision or direction of Valuation Tribunal

54A.-(1) Any person who is aggrieved by any decision or direction of the Valuation Tribunal under Article 13(3) or 54(2) may, with the leave of –

(a) the Lands Tribunal; or

(b) the President of the Valuation Tribunal,

appeal to the Lands Tribunal."

15. Rule A1(4) of the Rules states:

“(4) Subject to paragraphs (11) and (12), an appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal shall be instituted by serving on the registrar a notice of appeal in accordance with Form AC within 28 days from the date of grant of leave of appeal by the President of the Valuation Tribunal.”

16. The “Notes” attached to Form AC state:

“This notice of appeal should be sent to the registrar of the lands Tribunal for Northern Ireland within 28 days from the date of the grant of leave to appeal by the President of the Valuation Tribunal

.... The time limits imposed by the Rules for giving notice of appeal may be extended in exceptional circumstances, on application to the registrar in accordance with the provisions of Rule A2 of the Rating Rules of the Lands Tribunal Rules.”

17. Rule A2 of the Rules, as amended by the Lands Tribunal (Amendment) Rules (Northern Ireland) 2007 provides:

“An application for an extension of time for instituting an appeal under Rule A(1), (2) or (4) or making an application under Rule A1(7) shall be made as if it was an interlocutory application under rule 12 of the General Rules and shall state reasons for non-compliance with the requirements for service of a notice of appeal on the registrar within the prescribed period of 28 days.”

Discussion

18. Unfortunately the majority of the material submitted by the appellants did not deal with the reason for their delay in lodging their appeal to the Lands Tribunal. Ms Mulholland BL considered that the only point re the delay which the appellants had advanced in their submissions to the Tribunal was that they were confused by the wording of the NIVT cover letter dated 29th June 2017. The Tribunal refers to the following extract from the appellants’ written submissions which was the only paragraph dealing with the issue of the late appeal. This was also their position at oral hearing:

“In particular ‘As the President has refused your application ...’ but when you turn the page the first line states ‘I do grant leave ... it appeared to be somewhat contradicting but the upshot was that I took it to mean that we had been entirely vindicated and LPS had been ruled against. With their behaviour called into question, either way there was no mention of a 28 day time limit of any sort, we heard nothing from either party and I stupidly thought LPS had finally seen sense after getting their knuckles rapped and dropped what was to me a clear case of ‘jumping the gun’ in relation to serving a ‘completion notice’ before actually validating one.”

19. The Tribunal notes that there was contradiction between the covering letter and the President’s decision. The covering letter incorrectly advised “As the President has refused your application you may then apply for leave to appeal directly to the Lands Tribunal”. The President’s decision stated, however, “I do grant leave ... to appeal to the Lands Tribunal. Either way, whether leave was granted or refused, the next step for the appellants was clearly to refer to the Lands Tribunal. The covering letter also stated: “if you require any further information please do not hesitate to contact us”. If there was any confusion, the appellants could have simply contacted the NIVT for clarification.

20. With regard to the appellants assertion that “either way there was no mention of a 28 day time limit of any sort” the Tribunal refers to paragraph 11 of the President’s decision which cited Rule A1(4) of the Rules:

“(4) ... an appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal shall be instituted by serving on the registrar a notice of appeal in accordance with Form AC within 28 days from the date of the grant of leave of appeal by the President of the Valuation Tribunal.”

The 28 day time limit for leave to appeal was therefore clearly stated in the President’s decision.

21. At hearing the Tribunal asked Mr McKay how he considered that the appellants had been “vindicated” by the President’s decision granting “leave to appeal” and how he also considered that LPS had its “knuckles rapped”. He referred the Tribunal to paragraph 16 of the President’s decision:

“16. I have scrutinised the Decision in order to determine the manner in which the tribunal addressed the issue of any appeal against a Completion Notice being made out of time. I am not fully satisfied that the tribunal has adequately and properly accounted for Mr McKay’s arguments and I am not satisfied that the tribunal has adequately set forth in the Decision full and proper particulars of the tribunals resolution of the issues concerning applicable statutory time limitations and indeed has addressed any basis for possible extension of time (or indeed the converse) on foot of any of the arguments advanced by Mr McKay. There are clearly some matters of settled law (for example, the financial means of any party are not properly to be taken into account in the determination of matters of this type) which might have arisen, but my primary concerns are procedural. These concerns relate to the fundamental entitlement of any appellant to the Valuation Tribunal to have a reasonably comprehensive and clear adjudication afforded concerning any issues raised or emerging in any appeal and the tribunal’s fundamental obligation in that regard adequately to address and to dispose of any pertinent issues in order to give any party a clear and adequately comprehensive indication of why they have won or lost....”.

22. Ms Mulholland BL submitted that a clear reading of the President’s decision showed that his concerns were “procedural” and there was no criticism of the respondent whatsoever. The Tribunal agrees, the President was merely citing his reasons for granting leave to appeal, which had been sought by the appellant. There was no “vindication” of the appellants’ position nor was there any criticism of the respondent.
23. Ms Mulholland BL submitted that the appellants were not actively pursuing an appeal, rather they were reacting to a “final demand” letter which they received in December 2018, in an effort to delay paying their rates liability. She provided a table illustrating the chronology of demand letters issued compared with action taken by the appellants which she submitted

clearly showed that the appellants were motivated only to obstruct the respondent's debt recovery process:

**"DEMANDS ISSUED FOR PAYMENT
OF RATES**

ACTION TAKEN BY MR MCKAY

16th February 2015. First Rate Bill issued.
Total Amount Due - £2,103.95

19th March 2015 Mr McKay appeals to COV

1st April 2015. Rate Bill. Total Amount
Due - £3,587.90

NONE

27th April 2015. Rate Bill. Total Amount
Due - £3,219.92

NONE

7th June 2015. Final Rate Demand – **Debt
Recovery Action** letter issued. Amount Due -
£3,219.92

29th June 2015 – Mr McKay appeals to NIVT
on ground that the property should not be
valued for rating purposes

20th July 2015. Rate Bill. Total Amount Due -
£3,219.91

NONE
(NIVT APPEAL ONGOING)

28th September 2015. Final Rate Demand.
Total Amount Due - £3,219.91

NONE
(NIVT APPEAL ONGOING)

12th November 2018. Rate Bill. Total
Amount Due - £7,307.39

NONE

23rd December 2018. Final Rate Demand -
Debt Recover Action letter issued.
Amount Due - £7,307.39

Mr McKay appeal to LT received on
31st December 2018."

24. Ms Mulholland BL submitted that this chronology demonstrated a history of disregard for the rules of the NIVT and the Lands Tribunal and a strategy to delay payment of rates. The Tribunal notes that on the three occasions on which the appellants received final rates demands they reacted by issuing appeals.

25. Ms Mulholland BL also submitted that the undue delay by the appellants had resulted in substantial cost implications for Land and Property Services ("LPS"):

- (i) the cost of the appeal to NIVT

- (ii) costs of the appeal lodged with NIVT necessitating preparation of Presentation of Evidence and attendance at hearing taking up the time of the Appeal Valuer and Senior Valuer for domestic appeals.
- (iii) this had an impact on the delivery of LPS services and responsiveness to other customers, especially those with ongoing domestic appeals.
- (iv) costs to LPS Revenue & Benefits in respect of final notice demands and potential enforcement action and potential recovery proceedings in the Magistrates Court in respect of the Appellant's non-payment of rates.
- (v) adverse impact on local and central government finances in that the appellants have an outstanding rates bill of £8,741.52.
- (vi) cost of legal advice and representation – DSO and Counsel.
- (vii) all the while the property remains incomplete and failing to meet the policy objectives that the Completion Notice regime was designed to meet.

26. The Tribunal notes the substantial costs to the respondent to date.

Conclusion

27. Form AC states that "the time limits imposed by the Rules for giving notice of appeal may be extended in exceptional circumstances". The Tribunal finds that there were no exceptional circumstances in the subject reference:

- (i) The 28 day time limit to lodge an appeal to the Lands Tribunal was clearly stated in the President's decision. The appellants took almost 1 year and 6 months to appeal.
- (ii) If there was contradiction between the wording of the covering letter and the President's decision the appellants could have immediately sought clarification from the NIVT but they failed to do so.
- (iii) Whether the respondents considered that they had been refused or granted leave to appeal, in either case the next step was to contact the Lands Tribunal within 28 days, as directed by the President's decision. They failed to do so.

- (iv) There was nothing in the President's decision which criticised LPS nor was there any vindication of the appellants' position at NIVT. The decision dealt with an application by the appellants for "leave to appeal" and they should have promptly followed up by lodging an appeal to the Lands Tribunal.
- (v) There had already been substantial costs to the respondent and if the Tribunal allowed an appeal which was over 1 year and 5 months out of date, this would substantially add to these costs.
- (vi) The appellants had a history of reacting to "final rate demands" by lodging appeals.

28. For these reasons the Tribunal declines to exercise its discretion to accept a late application. The appellants' application for an extension of time is therefore dismissed.

18th July 2019

**Henry M Spence MRICS Dip.Rating IRRV (Hons)
Lands Tribunal for Northern Ireland**

Appearances:

Appellants – Mr Martin McKay, Litigant in Person.

Respondent – Ms Maria Mulholland BL instructed by the Departmental Solicitor's Office.