

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 2/24

MR JIM MAWHINNEY & MRS IRENE MAWHINNEY - APPELLANTS

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr J Leonard, President

Members: Mr A Tough FRICS and Mr G McKenna.

Hearing: 18 July 2024, Belfast

DECISION

The unanimous decision of the tribunal is that the appeal is dismissed by the tribunal, without further Order.

REASONS

Introduction

1. This is a reference under the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). This case was dealt with by oral hearing with the appellants being present and the respondent Commissioner was represented at hearing by Mr Mark Duffy and by Mrs Gail Bennett.
2. The appellants, Mr and Mrs Mawhinney, by Notice of Appeal dated 7 February 2024 and received by the Office of the Tribunal on 12 February 2024 (Form 9), appealed to the tribunal against a Completion Notice issued in accordance with the statutory provisions mentioned below in respect of a hereditament situated at number 14 Craigadoo Road, Dunnyvadden, Ballymena BT42 4RS ("the property").

The Law

3. The relevant statutory provisions are contained in the 1977 Order; these are Article 25B and Schedule 8B to the 1977 Order. The first of these provisions, Article 25B of

the 1977 Order, provides in respect of new buildings and completion days and Completion Notices, as follows:-.

25B.—(1) Schedule 8B (which makes provision with respect to the determination of a day as the completion day in relation to a new building) shall have effect.

(2) Where—

(a) a completion notice is served under Schedule 8B; and

(b) the building to which the notice relates is not completed on or before the relevant day, then for the purposes of this Order the building shall be deemed to be completed on that day.

(3) For the purposes of paragraph (2) the relevant day in relation to a completion notice is—

(a) where an appeal against the notice is brought under paragraph 4 of Schedule 8B, the day determined under that Schedule as the completion day in relation to the building to which the notice relates; and

(b) where no appeal against the notice is brought under that paragraph, the day stated in the notice.

(4) Where—

(a) a day is determined under Schedule 8B as the completion day in relation to a new building, and

(b) the building is not occupied on that day,

it shall be deemed for the purposes of Article 25A to become unoccupied on that day.

(5) Where—

(a) a day is determined under Schedule 8B as the completion day in relation to a new building, and

(b) the building is one produced by the structural alteration of an existing building,

with the hereditament which comprised the existing building shall be deemed for the purposes of Article 25A to have ceased to exist, and to have been omitted from the list, on that day.

(6) In this Article—

(a) “building” includes part of a building; and

(b) references to a new building include references to a building produced by the structural alteration of an existing building where the existing building is comprised in a hereditament which, by virtue of the alteration, becomes, or becomes part of, a different hereditament or different hereditaments.

The second provision, 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.

In context, the Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 (“the 2011 Regulations”) provided that from 1 October 2011 domestic buildings and parts of buildings for the purposes of the 1977 Order became subject to rating, subject to certain statutory exceptions. Unless excepted, rates are payable on an unoccupied domestic property at the same level as if the property were to be occupied.

The Evidence and Submissions

4. Any evidence and the appellants’ submissions are available from the appellants’ application to the tribunal and the tribunal also considered any other relevant evidence and documentation available, including a Presentation of Evidence prepared by Mr Mark Duffy MRICS on behalf of the respondent and dated 6 March 2024 and submitted to the Office of the Tribunal.

5. The Presentation of Evidence sets out the pertinent statutory provisions and also a timeline which records the following relevant dates: 19 April 2012 (the tribunal believes that this reference might include a typographical date error and might intend to refer to “2022”), the case was registered to value the property; 19 July 2023 a Completion Notice was served by the District Valuer confirming that 17 October 2023 was considered to be the Completion Date; 23 July 2023 the appellants appealed the Completion Notice to the Commissioner of Valuation; 26 July 2023 an appeal case was registered; 15 August 2023 a Completion Notice appeal certificate was issued by the Commissioner of Valuation stating, “Completion Notice valid”; 26 January 2024 the Certificate was reissued. The Valuer was informed by the appellants that the original Completion Notice appeal certificate had not been received when the Valuer sought access for inspection to value the property to enter into the Valuation List; 7 February 2024 the appellants appealed the Commissioner’s decision to the Northern Ireland Valuation Tribunal. The Presentation of Evidence recites the content of the appellants’ appeal in the following terms:

“The house on site 14 Craigadoo Road is still incomplete and unoccupied. It is an empty shell with no permanent staircase. The septic tank is not connected. There is no running water. There are no bathroom suites/toilets/bath/ sinks etc or furniture in the building. We have not even selected any the kitchen yet. There is no heating in the building. We don’t even have steps at the front or rear of the house. We do not have any services like bin collections, streetlights or waste disposal at the site. It will take a considerable amount of time and money before we will be able to complete the build and move in. Unfortunately, due to circumstances it will not be for at least a year or two. I am sure that you are aware that the price of materials have doubled or more since we started this build so this is having a huge impact on our financial resources and our health. I should be grateful therefore if he would please review your decision and grant this appeal”.

6. In the respondent’s opinion and comments set out in the Presentation of Evidence it is stated that contact details were not provided as part of the appellants’ initial appeal application and therefore the appellants were asked to make contact with LPS, by letter dated 26 June 2023. The appellants contacted LPS by telephone on 31 July 2023 and an inspection of the property was arranged for 3 August 2023. During the inspection the LPS representative, Mr Duffy, noted that the property externally had reached an advanced stage of completion with roof, windows and external doors in place, although Mr Duffy noted that the external doors were not fully weathertight. Internally, Mr Duffy noted that the house was in a shell-like condition with some first fix works undertaken. This was shown in the photographic evidence attached to the Presentation of Evidence. The appellants informed Mr Duffy that planned works progress was dependent on money being saved and occupancy was hoped to occur towards the end of 2024. Mr Duffy informed the appellants that they would be eligible for the developer’s exclusion which, given that the property was vacant, would be up to a period of 12 months from when the property was entered into the valuation list. The Presentation of Evidence refers to an image of the property taken on 5 August 2023 when it was determined that the house was Completion Notice ready. A copy of this image was attached at Appendix 2 to the Presentation of Evidence. It was deemed that the outstanding works, as at the date when the Completion Notice was issued, could reasonably be completed within 90 days. The Presentation of Evidence refers to a number of legal cases where similar issues have been addressed by the Valuation Tribunal in Northern Ireland. The cases referred to were *Patton v Commissioner of Valuation (NIVT 5/18)* itself referring to a case of *Moffat v Commissioner of Valuation*. The case of *Dixon v Commissioner of Valuation (NIVT 5/14)* was also referred to in the Presentation of Evidence.
7. The tribunal heard oral evidence from both Mr and Mrs Mawhinney who provided evidence in most pleasant and forthright manner. Mr Mawhinney explained that he was a builder by occupation and that the period of restrictions following on from the Covid-19 pandemic had been extremely difficult, both personally and financially. He also explained that the cost of building materials had very substantially escalated in recent times and that many building materials indeed now cost well in excess of twice what these had cost prior to the pandemic. Mr Mawhinney explained that the scaffolding that had been used in the construction was still surrounding the property

and that this scaffolding was needed to finish off external rendering before the scaffolding could be removed; only at that latter stage could the sewers and drains then be constructed and the property could thereafter be connected to the sewers and water supply. When asked for an explanation for a possible timescale for completion of construction, Mrs Mawhinney gave an estimate of the end of 2025.

8. In this appeal to the tribunal the appellants assert that works can only be completed when funds are earned and have drawn the tribunal's attention to the significant escalation in materials cost in recent times and the adverse impact of the Covid-19 pandemic in recent years. However, in a concluding statement of the respondent's position in this appeal, the submission advanced is that, taking all relevant matters into consideration, the property was Completion Notice ready and the Completion Date ought to be 17 October 2023 and accordingly the Completion Notice was valid. Mrs Mawhinney stated that the appellants were grateful for the so-called developers' exclusion that had been afforded. The tribunal notes the respective submissions of the parties including the Presentation of Evidence which has set forth the respondent's submissions concerning the legal test to be applied in the appeal. The tribunal's attention has been brought to the previously-determined Valuation Tribunal cases of ***Patton v Commissioner of Valuation*** and ***Moffat v Commissioner of Valuation***. The legal point emerging from these cited cases, so it was submitted on behalf of the respondent, is that the personal circumstances of any appellant should not be taken into account when determining whether a building can be completed within the relevant period (the period provided by the Completion Notice). In the respondent's submission there is reference made to a further case of ***Dickson v Commissioner of Valuation*** and there is a citation from that case set out in the Presentation of Evidence. The test properly to be adopted, so it was submitted, was whether a competent builder with sufficient resources could complete works within three months and that was the deciding factor.
9. In regard to the appellants' assertions advanced in this appeal, the appellants had noted that the respondent's representative had stated that neither money nor personal circumstances should be taken into consideration upon the issue of whether the subject property could be completed within three months. The appellants' view was that this was entirely unfair and unrealistic and that this disregarded the reality of the situation whereby construction could only proceed when funding was available to the appellants in the context of a very significant escalation in the cost of materials, post-pandemic. The tribunal is most grateful to the appellants for the succinct and candid assessment and presentation of their personal position and views in regard to this appeal.

THE TRIBUNAL'S DECISION

10. This is a case where, until the advent of the statutory "unoccupied premises" provisions, such as are provided for by the 2011 Regulations, the subject matter of this appeal, being a domestic property, would very probably not have given rise to any significant issues. However, the current regime has been operative now for quite a number of years. Thus, the subject property potentially falls for inclusion within the Valuation List upon the service of a Completion Notice and upon deemed completion upon the relevant day as specified.

11. In regard to Article 25B and Schedule 8B of the 1977 Order, Article 25B provides that 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. Where, as in this case, a statutory Completion Notice is served under Schedule 8B and the building to which the notice relates is not completed on or before the relevant day, then the building (in this case the subject property) shall be deemed to be completed on the relevant day. The Completion Notice was issued and it prescribed a relevant date. The subject property has not been completed, notwithstanding this. The respondent's contention is that, under the statutory provisions, the respondent is not permitted to take account of the individual's personal circumstances; a number of earlier Valuation Tribunal decisions are cited, in support, in that regard. It is sufficient to say that, in this case, the tribunal intends to adopt no differing approach than previously; the tribunal determines that it is appropriate to continue the line of determinations grounded upon what has been stated previously in a number of decisions, indeed those that have been expressly mentioned in the respondent's submissions made in the context of this case. The principles previously stated and adopted by the tribunal in these earlier matters remain unchanged and constant. Thus, there is no reason to depart from these established principles. Accordingly, for the reasons stated in the earlier cases, the personal circumstances of the appellants in this case, financial or otherwise, are not properly to be taken into account.

12. It is perhaps useful, at this point, to stand back somewhat from the facts in this specific case and briefly to observe the purpose and intent of the current statutory regime. Property tax affecting domestic properties is in certain respects no different from other taxes. For instance, in terms of income tax, any taxpayer is not afforded the facility personally to determine if that taxpayer is eligible or ineligible for taxation and, indeed, when any tax assessed must be paid. Such taxes are administered in accordance with long-standing principles and procedures. In that regard property tax (the current domestic rating regime) is no different. Regarding the specific issues raised in this case, it is not within any property-owner's gift personally to determine when a property may be completed and subject to rating. The regime has been designed to afford an opportunity to any property builder to proceed with due diligence and to complete construction in a manner that the property will then be included in the Valuation List and will be subject to rating. The matter of the determination as to when that inclusion might be, is removed from the property owner. That is done under the Completion Notice system. That provides for a determination, under the statutory provisions, of a fair and reasonable opportunity to any person to complete any construction. If the property owner seeks to defer or delay completion of construction, whether due to financial circumstances or otherwise, the "clock continues to tick", as it were, and the property is nonetheless rendered eligible for inclusion in the Valuation List and it is thereafter subject to rating. It must be emphasised that is not within the property owner's discretion to avoid this, by any action or inaction. This latter is the essence of the current regime: it is a regime which must be applied by the Valuation Tribunal in determining appeals of this nature. The interpretation of the word "*reasonably*" that is present (in Schedule 8B (1)(1) of the 1977 Order - "*....the building can reasonably be expected to be completed within three months...*") is necessitated. In the tribunal's view, that certainly does not direct attention towards the financial or other circumstances of the individual, or indeed any matter of personal choice or discretion, but rather it represents an entirely objective test.

13. The tribunal has carefully noted the timeline concerning the progression of this case and the various elements comprising the appellants' appeal. Dealing with these, the tribunal has been shown no compelling evidence, whether by expert's report or otherwise, contained as any part of the appellants' appeal, that the subject property could not be completed within the period provided for by the Completion Notice. The tribunal notes what appears to be, in the tribunal's view, an eminently reasonable proposal from the respondent that the appellants can avail of the so-called "developer's exemption". Indeed, Mrs Mawhinney has stated to the tribunal that the appellants are grateful that this has been afforded, thereby extending time. In cases like this it would be quite wrong to assume that the tribunal fails to understand the position of the appellants: the tribunal has considerable sympathy with the appellants' position and with the situation in which they find themselves. They have explained that clearly. However, the tribunal is constrained by the statutory provisions and the proper interpretation of the law and the application of the relevant law to the facts. To return then to the central issue, it cannot be within the appellants' gift to exercise their own discretion to proceed with construction as and when personal finances or other circumstances permit. The matter must be objectively assessed: that is precisely what the respondent has done in this case, applying the normal principles of assessment in accordance with established law and practise. That being so, the tribunal's determination is that the service of the Completion Notice in this case and the time provided to the appellants is fair and reasonable, taking into account all the relevant circumstances.
14. For these reasons, the appellants' appeal cannot succeed. The appeal is accordingly dismissed by the tribunal, without further Order.

James Leonard

J Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 28/8/24