

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
LANDS TRIBUNAL RULES (NORTHERN IRELAND) 1976
RATES (NORTHERN IRELAND) ORDER 1977
IN THE MATTER OF APPEALS
VR/14 & 15/2019

BETWEEN

WOODHILL HOLDINGS LIMITED – APPELLANT

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: Units A & B, 6 Loy Street, Cookstown

Part 1

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

Background

1. On 16th May 2018 the Commissioner of Valuation (“the respondent”) issued two decisions making “no change” to the rateable values of two properties at Units A and B, 6 Loy Street, Cookstown (“the reference properties”) following appeals lodged by Woodhill Holdings Limited (“the appellant”).

2. The respondent’s letters confirming his decisions gave directions on how to make further appeals to the Lands Tribunal:

“If you do not agree with the outcome as shown on the valuation certificate you can lodge a further appeal.

To appeal the decision you should contact the Lands Tribunal for Northern Ireland. Your appeal should be made within 28 days of the issue of this certificate. The appropriate appeal form can be obtained from:

The Lands Tribunal
Tribunal Hearing Centre
2nd Floor
The Annex
Royal Courts of Justice
Chichester Street
Belfast
BT1 3JF
Telephone: (028) 90327703

If you have any queries do not hesitate to contact us.”

3. Subsequently, on 31st May 2018, the appellant lodged two Form 3 Notices of Appeal (Valuation Tribunal Forms) with the Secretary of the Northern Ireland Valuation Tribunal (“NIVT”). The appellant, therefore, did not lodge appeal forms with the Lands Tribunal in accordance with the directions given in the respondent’s decision letters of 17th May 2018.
4. On 10th January 2019 the Registrar of the Lands Tribunal wrote to the appellant’s then solicitor, advising that the President of the NIVT had referred the appeals to the Lands Tribunal as he considered them to be non-prescribed appeals in the context of Article 54(4)(a) of the Rates (Northern Ireland) Order 1977 (“the Rates Order”) and if the appellant wished to proceed with the appeals it should complete and forward a Form AB in respect of each property. The Registrar advised the appellant that the forms could be found on the Lands Tribunal website.
5. The appellant, however, did not lodge correct the Notices of Appeal until 12th September 2019, some 8 months after the letter from the Registrar, dated 10th January 2019.

6. As, initially, the appellant company was not legally represented the respondent accepted at hearing:
 - (i) The appellant may have been confused about the difference between a Form 3 that it lodged with the NIVT and a Form AB that it ought to have lodged with the Lands Tribunal within 28 days of the respondent's decision letters.
 - (ii) The appellant may have been confused about the difference between the NIVT and the Lands Tribunal.
7. On that basis the respondent took no issue with the delay between 17th May 2018 and 10th January 2019. However, as the appellant was legally represented when the Registrar of the Lands Tribunal wrote to its solicitor on 10th January 2019 requesting completed Forms AB, the respondent did not consider that there was any excuse for the delay of 8 months up to 12th September 2019, when the Forms AB were eventually lodged by the appellant's solicitors.
8. The respondent considered that the appellant's solicitors were clearly aware of the delay as the Form AB which they eventually submitted sought an extension of time but failed to give a reason for the 8 month delay.
9. The preliminary issue, therefore, to be decided by the Tribunal was whether to accept the appellant's application for an extension of time to lodge its appeals.

Procedural Matters

10. At hearing, Mr Sean MacMahon represented the appellant as a litigant in person. The respondent was represented by Ms Maria Mulholland BL, instructed by the Departmental Solicitor's Office. The Tribunal is grateful to both parties for their helpful submissions.

Positions of the Parties

11. The appellant's position was that it had lodged 2 appeals, on 23rd May 2018, to the NIVT and receipt was acknowledged on 30th May. The appellant therefore considered that the appeals had been submitted on time.

12. The respondent's position was that the appellant had failed to give any reason for its delay of 8 months in lodging a Notice of Appeal to the Lands Tribunal, following receipt of the Registrar's letter of 10th January 2019.

The Law

13. Rule A1(2) of the Lands Tribunal Rules (Northern Ireland) 1976 ("the Rules", as amended by the Lands Tribunal (Amendment) Rules (Northern Ireland) 2007 provides:

“(2) An appeal under Article 54 of the Rates Order from a decision of the Commissioner (including a decision to make an alteration in the valuation list) shall be instituted by serving on the registrar a notice of appeal in accordance with Form AB within 28 days from the date of issue by the Commissioner of the decision appealed against.”

14. The notes to Form AB state:

“See rules A3 and A4 of the Rating Rules of the Lands Tribunal Rules (Northern Ireland) 1976 SR 1976 No 146,

1. (i) The original notice of appeal and a copy thereof should be sent to the registrar of the Lands Tribunal for Northern Ireland within 28 days from the date of issue by the Commissioner of Valuation of his decision in appropriate Certificate or Notice to which this appeal relates.

2. (ii) A copy should be sent to the District Council for the area in which the hereditament is situated.

3. (iii) Where appropriate, a copy of the Notice of Appeal should also be sent to each person whose name is entered at 9 overleaf.

The time limits imposed by the Rules for giving notice of appeal or for doing any act or taking any steps in connection with any proceedings **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.” [Tribunal emphasis]

15. Rule A2 of the Rules provides:

“Any application for an extension of the time for instituting an appeal under rule A1(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 requirement for service of a notice of appeal ... on the registrar within the prescribed period of 28 days.”

16. Rule 12 of the General Rules provides:

“Interlocutory applications

12.-(1) except where these rules otherwise provide, any application for an order or directions of an interlocutory nature in connection with any proceedings shall be made to the registrar.

(2) The application shall be made in writing and shall state the title of the proceedings and the grounds upon which the application is made.

(3) If the application is made with the consent of another party the terms of such consent shall be set forth in writing and signed by or on behalf of all consenting parties.

(4) Where any party has not consented to the making of an application a copy of the application shall be served on him and the application shall state that such service has been effected.

(5) Any part (sic) who objects to the application may, within 7 days after receiving a copy thereof, send written notice of objection to the registrar and to the applicant, and before making any order on the application the registrar shall consider any objections which he may have received and, if so required by any party, shall give all parties an opportunity of appearing before him.

(6) When dealing with any application under this rule, the registrar shall have regard, inter alia, to the convenience of the parties and the desirability of limiting so far as practical the costs of the proceedings, and shall communicate (sic) his decision in writing to each party thereto

(7) The registrar may, and shall if so required by the applicant or by any party objecting to an application under this rule, refer the application to the President for decision.

(8) Any party aggrieved by a decision of the registrar on an application under this rule may appeal to the President by giving notice in writing to the registrar and to every other party within 7 days after receiving notice of the decision or within such further time as may be allowed by the registrar, but an appeal from a decision of the registrar shall not act as a stay or (sic) proceedings unless so ordered by the President.

(9) The powers and duties of the President under this rule may be exercised and discharged by any member or members of the Tribunal authorised by the President in that behalf.

(10) The powers of the registrar under this rule shall include the power to direct by which party or parties to the proceedings the costs of or incidental to or consequent upon an interlocutory application are to be borne, and to direct that all or some part of such costs are to be costs in the cause.

(11) Upon the hearing the Tribunal may revoke or vary an interlocutory order as to costs made under this rule.”

Discussion

17. During the period, 10th January 2019 to 12th September 2019 (“the relevant period”), the appellant had been legally represented by Doris & MacMahon, solicitors. Although they were

no longer on record they helpfully provided a submission on behalf of the appellant to assist the Tribunal. The Tribunal is grateful to the solicitors for their submission.

18. The solicitors advised the Tribunal that their client had submitted two appeals to the NIVT on 23rd May 2018 and receipt of these notices was acknowledged by email to the appellant on 30th May 2018. The solicitors were then instructed in October 2018 to follow up with the NIVT in order to ascertain what stage the process was at. A form of authority was lodged with the NIVT on 22nd October 2018.
19. An acknowledgment was received on 24th October 2018 and an indication was given by the NIVT that there was a query on the two appeals which were currently with the President of the NIVT. On 27th November 2018 the solicitors were advised that the President was still considering a query on the two appeals.
20. On 10th January 2019 the solicitors advise that they were informed by email that the President had considered the appeals but as there was no domestic classification concerning either of the two properties there were no Capital Value List entries. The solicitors were informed that the appeals had, therefore, been transferred to the Lands Tribunal and that a representative of the Lands Tribunal would be in touch in due course.
21. The solicitors then received a formal letter in the post, dated 10th January, from the Registrar of the Lands Tribunal, indicating that the appeals had been transferred to the Lands Tribunal and this letter contained a request to lodge a Form AB in respect of each appeal. The solicitors claim that there was no time frame stipulated in this correspondence. As the matter had already been within the court system since May 2018 the solicitors position was that they took it that the statutory time frame had already been complied with, particularly given that they were in receipt of an email confirming this, dated 30th May 2018.

22. When the solicitors were advised of the revised position in January 2019 their client was already outside the statutory 28 day time limit but they claim no reference was made to this in the correspondence. The solicitor's submit that it would be inequitable to disallow the appeals on the basis that they were out of time, given the original appeals had been acknowledged and their client, therefore, had no idea there was any issue with the 28 day time limit. When the matter was eventually transferred to the Lands Tribunal the solicitors claim they were not aware that the clock again began ticking. The solicitors considered that there were exceptional circumstances within this reference to warrant granting the appellant an extension of time to lodge its appeal. Furthermore they submitted there was no prejudice to the respondent as a result of the overall time lapse.
23. Ms Maria Mulholland BL responded to the solicitors submission as follows:
- (i) The respondent noted the solicitors accepted that the appellant lodged two appeals with the NIVT on 23rd May 2018 and there was no mention of any appeal having been lodged with the Lands Tribunal in and around that date; this supported the respondent's understanding, as confirmed by the Lands Tribunal, that no Form AB's were lodged with the Lands Tribunal in and around May 2018 and the only Form AB's ever lodged on behalf of the appellant were those lodged by the solicitors on 12th September 2019.
 - (ii) In light of the fact that the appellant had the benefit of legal advice from October 2018 it remained unexplained as to why the appellant did not lodge the proper forms (Form AB) in the proper tribunal (Lands Tribunal) shortly after instructing solicitors.
 - (iii) In any event the solicitors had completely failed to explain why it took them 8 months to lodge the Form AB's with the Lands Tribunal, following receipt of the Registrar's letter of 10th January 2019. The solicitors were clearly aware that in September 2019 the appeals were out of time, as they had included an application for an extension of time on the appeal forms.
 - (iv) It was not sufficient to blame the delay on the appellant's confusion in lodging the wrong forms with the wrong tribunal. As soon as the solicitors were instructed the

error ought to have been picked up and rectified as soon as possible. The first correspondence sent by the solicitors in respect of the reference properties was dated 29th June 2018 to the Application Based Rates Relief Team arguing that the properties should be afforded rates relief. The solicitors furnished a form of authority to the NIVT on 22nd October 2018 and at worst, the Form AB's should have been lodged within 28 days of the Registrar's letter dated 10th January 2019 for the following reasons:

- (a) the Rules of the Lands Tribunal were clear;
 - (b) the wording on the back of Form AB was clear;
 - (c) the wording of the respondent's decision letter was clear; and
 - (d) the appellant was legally represented during the relevant period.
- (v) It was unfair to rely on the Registrar's failure to stipulate a timeframe for the Form AB's to be lodged in light of the fact that the appellant was legally represented and the time limit was stipulated in the Rules, on the Form AB itself and in the respondent's decision letter, which also directed the appellant to the proper tribunal.
- (vi) Furthermore, if the solicitors were unsure about the time limit all they had to do was contact the Registrar, which they failed to do. However, in light of the extension of time sought by the solicitors on the Form AB's this was clear evidence that they were aware of the time limit all along and that the appeals were out of time.
- (vii) The 8 month delay in lodging the Form AB's did prejudice the respondent in the following ways:
- (a) The costs of dealing with an out of time appeal and the additional costs involved in dealing with an extension of time application to the Lands Tribunal.
 - (b) The time involved in dealing with an out of time appeal and the additional time in dealing with an extension of time application which had an impact on the delivery of Land & Property Service ("LPS") business and responsiveness to other customers, especially those with ongoing appeals.

- (c) During the tenure of the subject reference the appellant had failed to pay rates and LPS had to stay enforcement proceedings. The appellant's failure to pay rates had an adverse impact on local and central government finances.

24. Ms Mulholland BL concluded:

- (i) The submission from the solicitors completely failed to explain why it took 8 months to lodge the Form AB's from the date of the Registrar's letter. There were, therefore, no "exceptional circumstances" to warrant an extension of time being granted.
- (ii) The Tribunal should refuse the appellant's application for an extension of time.

25. The Tribunal papers record that:

- (i) No Form AB was received in the Tribunal on or around May 2018.
- (ii) Following the Registrar's original letter of 10th January 2019, telephone messages were left with the solicitors for the appellant on 15th February 2019 and 28th March 2019. No response was received.
- (iii) A letter was sent to the solicitors on 2nd April 2019 and a response was received on 12th April 2019 advising that "we shall submit all paperwork within the next number of days". It was not received until 12th September 2019.

26. It was accepted by the respondent, that the appellant, as a litigant in person had been confused about which forms should be returned to which Tribunal, despite the fact that the respondent's decision letters clearly advised the correct forms to be used and which Tribunal they should be sent to.

27. In order to rectify this issue, the Registrar forwarded the correct forms to the solicitor for the appellant on 10th January 2019. The wording on the back of the forms clearly stated that

there was a 28 day time limit for submission. If there was any confusion the solicitors could have contacted the Registrar.

28. In addition, despite reminders in February, March and April the solicitors failed to submit the correct forms until 12th September 2019. The forms eventually submitted by the solicitors had requested an extension of time, so they were clearly aware that the forms were out of time.

29. The Tribunal derives assistance from the case of Rohde v Herefordshire Council [2016] EWHC (Admin) 2407. This case concerned an appeal against a decision of the Valuation Tribunal for England refusing an extension of time to lodge an appeal. The High Court found that:
 - (i) The delay was a serious one given that the notice of appeal was lodged in excess of six weeks after the permitted period of four weeks.
 - (ii) No satisfactory explanation had been given for the delay. The High Court accepted that the appellant was not legally qualified and not legally represented. They recorded, however, that it was reasonable to expect parties to lodge notices of appeal that were properly completed within the applicable time limits.
 - (iii) The system would be unworkable if special allowance was made for those who were not legally represented.

30. The application for an extension of time was refused due to:
 - (a) the length of delay;
 - (b) the lack of satisfactory explanation;
 - (c) the potential prejudice to the respondent;
 - (d) the strong public interest in good administration.

Conclusion

31. The Tribunal agrees with Ms Mulholland BL and finds that there were no “exceptional circumstances” in the subject reference to warrant an extension of time for submitting the appeals. The appellant’s application for an extension of time is therefore dismissed.

14th February 2020

Henry M Spence MRICS Dip.Rating IRRV (Hons)

Lands Tribunal for Northern Ireland

Appearances:

Appellant – Mr Sean MacMahon, litigant in person.

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