

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED)
AND THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007 (AS AMENDED)

Case Reference: NIVT 5/16

AIDAN LOUGHRAN - Appellant

and

THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – Respondent

CHAIRMAN – Mr Keith Gibson B.L.

MEMBERS – Mr Robert McCann and Mr David McKinney FRICS

Introduction

- 1) This matter was initially the subject of a hearing by written submissions only, listed on the 3rd May 2017 at the Tribunal's Hearing Centre, Royal Courts of Justice, Belfast, BT1 3JF. At the convened hearing the Tribunal was dissatisfied with the information provided by both the Appellant and Respondent and on or about the 25th May 2017 the Tribunal ordered to be provided a schedule of information which the Tribunal considered it necessary in order to allow and provide for a fair hearing of the appeal. The schedule of requested information was forwarded to both the Appellant and Respondent, however, the Appellant chose not to respond.
- 2) The Respondent did however provide a comprehensive response on or about the 9th June 2017, for which it is to be commended. The Tribunal had originally envisaged reconvening an oral hearing, however in the interests of both expediency and cost, the Tribunal has decided to dispense with the requirement for an oral hearing and to deal with the matter as originally envisaged by the parties to the appeal.

The Property

- 3) The subject property, which is located at 106 Camlough Road, Granagh, Co Tyrone, BT79 9BJ was, from a review of the entries on Land Registry, first owned by the Appellant Mr Aidan Loughran of 30 Rockstown Road, Carrickmore, Co Tyrone in or about 2003 (his

ownership was registered with Land Registry on or about the 16th April 2003). Thereafter, it appears the property was sold and transferred to Mr Patrick Loughran with Mr Patrick Loughran's ownership being registered on the 9th June 2009. It was transferred again to Mr Patrick Francis Donaghy with his ownership of the property being registered on the 3rd October 2014 in Land Registry.

- 4) It was during Mr Patrick Loughran's ownership that a Completion Notice of the 17th May 2012 was served on an entity known as APL Developments. It goes without saying that APL Developments is not a legal entity. Presumably what was intended was to serve the matter on APL Developments Ltd. In the Notice, Land & Property Services made clear to APL Developments that it considered the work on the property to be completed or that it could be reasonably expected to be completed within three months. The Notice indicated that LPS considered the completion date to be the 15th August 2012 and that afterward the property would be liable for full rates. The effect of the service of such a Completion Notice would be to make the person, upon whom service of the Notice was effected, liable for rates pursuant to Article 25A of the Rates (Northern Ireland) Order 1977 (Articles 25A and 25B, along with Schedules 8A and 8B provide for a regime for rates to be levied on new build residential properties, whether they are occupied or not).
- 5) The relevant provisions of Schedule 8B make clear that in deciding whether or not to serve such a notice, the Department must be satisfied that the building can reasonably be expected to be completed within three months from the date of service of the notice. Pursuant to Schedule 8B, paragraph 3(4)(i), the person upon whom a Completion Notice is served may, within 28 days, appeal to the Commissioner (the Respondent in this appeal) against the Notice on the ground that the building cannot reasonably be expected to be completed within the specified timeframe.
- 6) Attached to the correspondence was an extract from Schedule 8B referred to above, which gave details of how and when an appeal could be made as against the service of the Completion Notice. The decision to serve the Notice on the entity known as "*APL Developments*" was undoubtedly influenced by Building Control information provided by Fermanagh & Omagh District Council which indicated that the Applicant was "*APL Developments*". There was no reason for LPS, at the time, to query said information beyond the fact that it should or ought to have been realised that APL Developments was not, as aforementioned, a legal entity.

- 7) Notably, there was no appeal against the Completion Notice by APL Developments (Ltd) or any of the Directors on its behalf. As such, on the 15th August 2012, the matter was entered into the Valuation List with a capital value of £165,000. Thereafter and on the 20th November 2015, there was an application by Mr Aidan Loughran for a revision of the Valuation List. This application was made to the District Valuer and in it Mr Aidan Loughran indicated that his reason for disagreeing with the valuation was that “*the property is not complete – no sewers, electricity. It is not plastered. Needs revalued.*” Mr Loughran gave his address as 144 Termon Road, Carrickmore.
- 8) The application was registered as an appeal and this appeal went to the Commissioner of Valuation who, on the 3rd May 2016, rejected the appeal. This led ultimately to the appeal which this Tribunal had to consider. Before leaving this narrative however, it must be said that, rather bizarrely, on the 10th December 2015, a Mr Patrick Donaghy of 229 Whitebridge Road, Sixmilecross, also made an application to the District Valuer for revision of the capital list in respect of the same subject property. His grounds mirrored those of Mr Loughran and may be recited as follows: “*This house is not finished, no water or Electricity or door or drains for Septic Tank.*” Quite unsurprisingly, his application was also rejected and Mr Patrick Donaghy did not take matters further (in the context of any appeal). What he did do however, on the 13th June 2016, was to make another application for revision of the Valuation List. He maintained that the house was not liveable or furnished but that he was working on it but needed time.
- 9) He also, at the end, claimed a “*developers exclusion*” [by way of explanation Land & Property Services have, in certain instances, acknowledged that, when a housing development is incomplete, LPS have the discretion to take into consideration (when considering how and when to apply rates) the aspects of the economic downturn which gave rise to estate developments remaining unfinished – it is doubtful whether or not this applies here. However see, in any event, the decisions of of **Paul Trimble and Sonia McCusker –v- Commissioner of Valuation for Northern Ireland** (Case Reference 33/11) and **McGarvey –v- Commissioner of Valuation for Northern Ireland** (Case Reference 43/13)]. This application was rejected. Mr Patrick Donaghy then, and on the 30th January 2017, attempted another tact, this time making an application for revision suggesting that in respect of subject property “*this is a cattle shed and should not be rated*”.

The Appeal

10) The Appellant appealed in a Notice of Appeal which was undated but which was received by the Valuation Tribunal on the 9th June 2016. The appeal, on the face of it, was out of time, however, by virtue of a decision dated the 29th September 2016 the Tribunal, differently constituted, decided to extend time. As such this appeal is validly constituted before this Tribunal. Mr Loughran promoted, as grounds for his appeal, the following:

(a) The property was and still remains a shell.

(b) That a Completion Notice was issued to APL Developments, however, the property was transferred to Patrick Loughran of 30 Rockstown Road long before that date.

11) These were the sole grounds for appeal.

The Respondent's Submissions

12) The Respondent, by way of written Submissions, commented that in respect of the completion, the completion Notice was served properly on APL Developments as they were the entity listed on the Building Control listing and, as such, the Completion Notice was served correctly.

Decision

13) The Tribunal has, in essence, two issues put forward which require determination, namely:

1. The state of the property; and
2. Service of the Notice.

14) The issue of the Completion Notice and the state of the property can be dealt with summarily. Once the Notice is served, by virtue of the operation of the legislation, the property is defined as habitable on a specified date. The person, upon whom the Notice is served, has the right or opportunity to appeal the Notice. If they do not appeal the Notice, then the property becomes subject to the rates regime on the date specified in the notice. Here there has been no appeal in respect of the Notice and, as such, this Tribunal has no

jurisdiction to consider whether or not the property is habitable or not. The issues therefore regarding whether or not it has sewers or electricity or is habitable are therefore irrelevant.

15) What is not irrelevant, however, is the issue of identity and service. Pursuant to Article 25A of the Rates (NI) Order 1977, a person is liable to discharge rates in respect of a hereditament which is unoccupied where either the hereditament is one to which Schedule 8A applies and the person is entitled to possession of it. The details of Schedule 8A are complex but provide, in paragraph 4, that where the name of any person liable to be rated under Article 25A is not known to the Department it shall be sufficient to assess him to the rate by the description of "*Non Occupying Ratepayer*" in respect of the hereditament. This suggests that personality is not material. A further provision for amendment to Section 24(2) of the Interpretation Act (Northern Ireland) 1954 is provided for within paragraph 8 wherein it is permissible to address the Notice on "*Person chargeable to rates under Article 25A of the Rates (Northern Ireland) Order 1977*" and by affixing it to a conspicuous part of the hereditament. The effect therefore of Article 25A when read in conjunction with Schedule 8A is to make liable for rates those persons whose identity is, or cannot be established at the relevant time the Notice is served but which may be established retrospectively. Paragraph 4 of Schedule 8A does, however, make it clear that this methodology is only to be utilised where the person liable to be rated is not known to the Department.

16) Unfortunately the term "*person liable to be rated*" does not have a precise definition within the legislation, however, Article 18 of the 1997 Order makes clear that every occupier of a hereditament which is included in the Valuation List shall be chargeable to rates. The legislation speaks to the occupier, however the exception in respect of non-occupied properties or hereditaments is dealt with within Article 25A which refers to the provisions of 8A which are dealt with above and specifically deals with the situation when the person is entitled to possession of the property. '*Persons entitled to possession*' is not given any further definition within the legislation and it must be said that persons entitled to possession covers a relatively wide class. Whilst it is not necessary within this decision to define that class, it is abundantly clear that the owner of the property is a person entitled to possession. From a review of the ownership of the property as per the Land Registry, it is clear that, at the relevant time, the Completion Notice was served, and the person who was certainly entitled to possession was Patrick Loughran, being the registered owner between the 9th June 2009 – 3rd October 2014.

17) It is assumed that Mr Patrick Loughran is a relative of Aidan Loughran but this is only a presumption liable to be rebutted. What is clear, however, is that the entity known as “*AP Developments*” was not entitled to possession of the premises. As such, there can be no suggestion that they are or could be liable for rates. Liability for Article 25B(4) prescribes that when the completion day is ascertained then, for the purposes of Article 25A, it becomes unoccupied on that day and therefore liable to rates. It is however a prerequisite that a Completion Notice be served and, inter alia, a Completion Notice be served on the person entitled to possession. On no reading of the legislation can it be said that APL Developments were entitled to possession. As such, the Notice served on APL Developments was invalid and no proper Notice has been served on the person entitled to possession of the property. The property remains unoccupied, and when taken in conjunction with the requirements of Article 25B and Schedule 8B that a date pertaining to completion be determined, no liability for rates has therefore yet arisen.

Conclusion

18) The erroneous decision by LPS to serve the Notice on APL Developments is, in the circumstances, entirely understandable and the decision to take the identity from Building Control is doubtless an entirely practical way of ascertaining liability under the Rates Legislation. This Tribunal is, however, not concerned with practical procedure put in place by LPS, only the legal liability of the Appellant to discharge rates in respect of the dwelling. To date this has not been established. It is the unanimous decision of the Tribunal that the appeal is therefore allowed.

Signed: Keith Gibson B.L.

Northern Ireland Valuation Tribunal

Date Decision recorded in register and issued to parties: 14th September 2017