

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 39/21

DAVID FREW - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr T Hopkins FRICS and Mrs N Wright.

Hearing: 22 February 2022, Belfast

DECISION

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"). The appellant, Mr David Frew, by Notice of Appeal dated 22 October 2021 and received by the office of the tribunal on 26 October 2021, 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 191 Church Road, Holywood, County Down BT18 9RN ("the subject property"). A "hybrid" oral hearing of this appeal took place on 22 February 2022, with the Chair attending the hearing remotely by WebEx and with the two other tribunal panel members being present in person at the Tribunals' Hearing Centre, Belfast. The appellant attended the hearing remotely by WebEx, as did the respondent's representative, Ms Marianne Graham MRICS. The tribunal is satisfied that this "hybrid" hearing arrangement afforded a fair and proper opportunity for the parties to advance their respective cases and this was confirmed expressly to the tribunal.

The Law

2. The relevant statutory provisions bearing upon this appeal are to be found in the 1977 Order, as amended. Two specific provisions of the 1977 Order are of note, 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,

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.

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.

3. It is also helpful to make reference to other statutory provisions which bear upon this appeal. In respect of the above-mentioned provisions and the rating of unoccupied domestic property, the previous statutory position, prior to 1 October 2011, was that Article 25A of the 1977 Order prescribed that rates were payable on unoccupied properties that fell within a class prescribed by Regulations. It is not necessary for the purposes of this decision to set out the statutory provisions in full. However, it should suffice to say that the earlier provisions (the Non-Domestic Rating (Unoccupied Hereditaments) Regulations (Northern Ireland) 2007) were revoked and replaced by the Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 ("the 2011 Regulations"). The effect of the 2011 Regulations is that now domestic buildings and parts of buildings (as well as non-domestic buildings or parts of buildings) subject to certain exceptions which do not apply in this case, became subject to rating. Accordingly, Article 25A and Schedule 8A of the 1977 Order, when read with the 2011 Regulations, prescribe that 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. In addition to the oral evidence of the appellant and that from the respondent's representative, evidence and the appellant's primary contentions are available from the appellant's appeal form dated 22 October 2021 presented to the tribunal and the tribunal also considered the following documentation: -
- a. Presentation of Evidence prepared by Ms Marianne Graham MRICS on behalf of the respondent and dated 29 October 2021 and submitted to the Office of the Tribunal.

- b. Copy of a letter dated 14 April 2019 from the appellant to the Commissioner of Valuation with the schedule listing of building work not yet started in respect of the subject property at that date and copy of a further letter from the appellant to Land and Property Services dated 2 June 2020 detailing works still to be attended to and referring to other matters.
 - c. Copy of a Letter from the Land & Property Services to the appellant dated 21 August 2020, informing the appellant that his application for exclusion from rating had been unsuccessful.
 - d. Copy of a letter dated 1 September 2020 from the appellant to Land & Property Services, making submissions and enclosing a copy photographs.
 - e. Copy of the appellant's Notice of Appeal to the Commissioner of Valuation dated 5 November 2020 and copy of the holding reply thereto from Land & Property Services dated 16 November 2020.
 - f. Copy email dated 11 August 2021 from Land & Property Services to the appellant (in response to the appellant's letter dated 14 July 2021) confirming that a Developer's 12 month exclusion had been awarded by the Application-based Rate Relief team but that this was the maximum duration for a Developer's exclusion being awarded. It was confirmed that no further exclusion could be awarded and that rates were due on the current valuation of the subject property.
 - g. Copy of the Appeal Certificate as signed by the Commissioner of Valuation dated 29 September 2021 (confirming no change in the assessed Capital Value) and of the accompanying letter to the appellant also dated 29 September 2021.
 - h. Copy annotated photographs of the subject property and grounds as taken by and as annotated by the appellant.
 - i. Copy communications between the Tribunal Secretary and the parties.
5. The Presentation of Evidence sets forth a schedule of material dates. As can be seen from what follows, the appellant has made quite determined efforts over a period of time to advance his arguments that the subject property ought to be exempt from rates. The history of the matter is as follows.

10 April 2019 the District Valuer issued a Completion Notice in respect of the subject property confirming completion day as being 10 July 2019.

1 May 2019 the appellant appealed the Completion Notice to the Commissioner of Valuation; the property was inspected and it was determined that the Completion Notice was valid; confirmation of this decision was issued to the appellant on 23 September 2019.

13 November 2019 in accordance with the Completion Notice, the District Valuer entered the subject property into the Valuation List with effect from 10 July 2019. The Capital Value was assessed at £465,000.

25 June 2020 the appellant applied to the District Valuer for exemption from rates on the grounds that the subject property was not yet complete. In response, the appellant was advised that the Completion Notice procedures had been followed correctly and the subject property had been correctly entered into the Valuation List, effective from 10 July 2019. A decision of no change to the existing Capital Value was issued on 5 August 2020.

15 September 2020 the appellant applied requesting an extension to the 12 month developer exclusion period. It was explained to the appellant in response to this application that there was no scope to extend the developer exclusion period. A decision of no change to the existing Capital Value was issued on 6 October 2020.

16 November 2020 the appellant appealed the decision of the District Valuer to the Commissioner of Valuation. This appeal resulted in no change to the Capital Value and details of this decision were issued to the appellant on 10 December 2020.

16 June 2021 the appellant submitted a further application (this being his third such application) to the District Valuer following receipt of a rates billing and, once again, he contended that rates should not be payable because the subject property remained incomplete. The District Valuer confirmed that the subject property had been correctly entered into the Valuation List and the case was closed, with no change. A decision was issued to the appellant respect of the foregoing on 29 June 2021.

20 September 2021 a further appeal to the Commissioner of Valuation was registered following correspondence received from Mr Stephen Dunne MLA, representing the appellant. The Commissioner of Valuation issued a decision of no change to the existing Capital Value and the outcome of this decision was then notified to the appellant and to his MLA on 29 September 2021.

26 October 2021 the appellant appealed the decision of the Commissioner of Valuation to the Tribunal.

It is clear from the foregoing that the appellant feels quite strongly that the subject property is still in the course of construction and he contends, both in the written material and also in his oral evidence and argument (and he made this quite clear when questioned by the tribunal on the point), that he should be permitted what would be in effect an unrestricted and an unlimited amount of time to proceed with construction and fitting out, prior to the subject property being liable for rates.

6. In the Presentation of Evidence Ms Graham confirmed that she had met with the appellant at the subject property on 27 September 2021. She states that she explained that the issues which the appellant had raised could not be taken into consideration in assessing the subject property for rates purposes. She confirmed that the Completion Notice procedures had been followed correctly and that she had explained the legislative provisions which governed this process (Article 25B and Schedule 8 of the 1977 Order). Ms Graham also confirmed that the appellant had made clear that he had no issue with the existing Capital Value, which had been assessed at £465,000. Upon checking that latter point with the appellant at hearing, the appellant confirmed expressly to the tribunal that this was the case: that he had no issue with the Capital Value assessment, but that his only contention was that the subject property ought to be fully exempt from rates until he had concluded all aspects of construction and fitting out of the subject property and that it was in a position to be marketed and sold. Accordingly, his case was that he did not accept that any time limitation should be applied by the relevant authorities under these circumstances.
7. On account of the foregoing concession made by the appellant concerning the Capital Value issue, whilst the Presentation of Evidence, for completeness, does set forth details of three other properties stated to be comparable to the subject property, it is noted that the tribunal is primarily tasked with reaching a determination in respect of the appellant's sole contention in this appeal, this relating to his argument concerning exemption from rates of the subject property. Accordingly, whilst the tribunal did give consideration to the correctness of the assessed Capital Value by considering the evidence available from the three stated comparables, the tribunal's primary consideration was directed to the appellant's appeal argument concerning exemption and to the opposing contention made on behalf of the respondent that the property was validly included in the Valuation List with the assessed Capital Value as stated. It is, for this reason, not necessary in this decision to set forth the statutory provisions relating to Capital Value; these have been set forth in many previous decisions of the tribunal.

THE TRIBUNAL'S DECISION

8. This is a case where, with the advent of rating of unoccupied domestic premises, the subject property potentially falls for inclusion within the Valuation List upon service of the Completion Notice and upon deemed completion on the relevant day, whether or not the construction and fitting out of the property has actually been completed. The legislative purpose is quite clear, but it is perhaps misunderstood by the appellant, to a degree, and this matter shall accordingly be clarified further below. The statutory provisions of Article 25B of and Schedule 8B to the 1977 Order are set out in full above. 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 the case of the appellant's property, 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. This of course is a statutory notional concept. The evidence is that the Completion Notice was issued on 10 April 2019 when the District Valuer issued the Notice in respect of the subject property. That Notice confirmed completion day as being 10 July 2019. It is important to clarify, in case that decision on the part of the District Valuer seems

harsh or unreasonable, that the construction of the subject property had actually commenced in 2016 and that the appellant had been afforded the full extent of the period of up to 12 months which can be granted under the procedure. It is clear to the tribunal that the construction and fitting out of the subject property has been an extremely protracted exercise, as it has been carried out by the appellant. When the reasons for that slow progression were explored by the tribunal, the appellant made clear that he was, as he self-described, a “small builder” and, further, that he had experienced difficulties in sourcing both labour and materials to proceed with the building work. Apart from being a “small builder” the appellant advanced as a reason for lack of progress the advent of Covid-19. The appellant states that this issue significantly affected his ability to source some building materials from suppliers, supplies being restricted due to pandemic supply-chain issues. Whilst some materials, for instance sand, cement and blocks, were locally available and there was apparently no supply issue, other materials, for example sewer pipes, were difficult to obtain from suppliers. He explained that the construction had been required to take a certain sequence. Using the example of the steps into the building (where there was a protracted delay in construction of something that to the tribunal would appear to have been capable of construction in a very few days) the appellant explained that the sewer pipes had to be laid underneath the steps and required to be first approved by Building Control before the steps could be constructed. Construction of the steps was therefore delayed, he stated, because of non-availability of the sewer pipes from building suppliers.

9. Therefore, having made a number of attempts to have the Completion Notice set aside, on 20 September 2021 a further appeal to the Commissioner of Valuation was registered following correspondence received from the appellant’s MLA, Mr Dunne. Again, the Commissioner of Valuation issued a decision of no change to the existing Capital Value and the outcome of this decision was notified to the appellant and to his MLA on 29 September 2021. It is against that decision by the Commissioner that the appellant now appeals to the Tribunal, this being his first appeal to the tribunal in that regard.
10. The tribunal notes that, under the statutory provisions, no account can be taken of the individual’s personal circumstances. Certainly, there is nothing expressly stated in the legislation concerning the taking into account of any individual's personal financial or other circumstances; the provisions are entirely silent in that respect. The legislative arrangements exist to provide 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). Part of the statutory purpose of this is to avoid the potential for endeavours to be made by individuals to exclude these properties from rating by not completing the final stages of construction.
11. In determining this point, the tribunal's view is that the legislation is intentionally silent upon the matter of personal circumstances and thus any personal circumstances are not to be taken into account. If personal circumstances were to be taken into account, express provision would have been made in the legislation. This legislation accordingly 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.

13. The interpretation of the word “reasonably” (in Schedule 8B (1)(1) of the 1977 Order - “...*the building can reasonably be expected to be completed within three months...*”), in the tribunal's view, does not direct attention towards the financial circumstances of the individual but rather towards other material factors. The tribunal would normally require sufficiently detailed evidence and submissions from any appellant concerning the specific impediments or obstacles to completion within the specified period in order to satisfy the tribunal that any building could not reasonably have been expected to be completed within that period. The tribunal cannot accept the appellant’s fundamental argument in this case that he ought to be permitted an unlimited time, at his own discretion, to complete the construction, extending up to the point when the subject property could be marketed and sold. This proposition is entirely at odds with the purpose and intent of the legislation.

14. There is no clear and compelling evidence that anything requiring to be attended to in order to complete the subject property could not have been attended to and completed by the extended period of time that has been provided in this case, notwithstanding that part of the period might have coincided with the advent of Covid-19. Completion day specified in the Completion Notice expired well before the advent of the disruption and difficulties caused on account of the pandemic. Further, the tribunal understands that any building supply-chain restrictions or difficulties were not present at the outset of the pandemic but that any such took some time to emerge. The subject property might still be potentially uncompleted or even unfit for habitation and perhaps there is currently no building control completion certification. However, the responsibility for this lies primarily with the appellant and is directly attributable to the approach which he has taken over a number of years to proceeding with the construction and not, in the tribunal’s view, causally connected with issues relating directly to the pandemic. It is the tribunal’s view that the subject property could reasonably have been expected to be completed within the specified period, objectively viewed.

15. Because of the foregoing, the appeal cannot succeed. Accordingly, the tribunal's unanimous decision is that the appeal is dismissed.

James Leonard

**James Leonard, President
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: 07 March 2022