

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: 28/10

DEBORAH CURRAN – APPELLANT

and

DEPARTMENT OF FINANCE & PERSONNEL - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Tom Matthews FRICS and Mrs Angela Matthews

Hearing: 18 April 2011, 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, Mrs Deborah Curran, appeared in person. Mr Lenny Peden appeared for the Department as respondent. The appellant appealed against the outcome of a decision on review of the Department that the appellant was not entitled to Low Carbon or Zero Carbon Homes rating relief.

THE LAW

2. The primary statutory provisions applicable to this matter are to be found in the 1977 Order as amended by the Rates (Amendment) Act (Northern Ireland) 2009. Article 30C of the 1977 Order provides for regulations to specify that, if prescribed conditions are satisfied, the first occupier of a newly-constructed dwelling-house which is a low-carbon home or a zero-carbon home should not be chargeable to rates in respect of such newly-constructed dwelling-house in respect of a prescribed period. In the case of a low-carbon home the prescribed period is not to exceed two years or to begin after 31st March 2013 and in the case of a zero-carbon home the

prescribed period is not to exceed five years or to begin after 31st March 2016. Article 30C of the 1977 Order also provides for applications for rating relief under these statutory provisions to the Department, for Departmental reviews of any decisions and for appeals in regard to any such to the Northern Ireland Valuation Tribunal.

3. The applicable regulations under the foregoing primary statutory provisions are to be found in the Rate Relief (Low-Carbon Homes Scheme) Regulations (Northern Ireland) 2010 (“the 2010 Regulations”). It is appropriate, as this is the first decision of the Northern Ireland Valuation Tribunal under these provisions, to set out in this decision some of the detail of the 2010 Regulations. The material regulations are those numbered 4 to 10 of the 2010 Regulations. The regulations provide as follows:-

Rate relief

4.—(1) Subject to the conditions in paragraph (2) being satisfied and to the provisions of these Regulations, a person who is the first occupier of a newly-constructed dwelling-house which is a low-carbon or zero-carbon home shall not be chargeable in respect of it to rates—

(a) in the case of a low-carbon home, for a period of two years; and

(b) in the case of a zero-carbon home, for a period of five years,

from the date on which he first occupies that dwelling-house or 1st April 2010, whichever is the later.

(2) The conditions referred to in paragraph (1) are—

(a) that work on the dwelling-house shall not have been completed before 1st April 2010;

(b) that the date on which the first occupier first occupies the dwelling-house is—

(i) in the case of a low-carbon home, not later than 31st March 2013;

(ii) in the case of a zero-carbon home, not later than 31st March 2016; and

(c) that—

(i) in the case of a low-carbon home, a low-carbon home certificate has been issued;

(ii) in the case of a zero-carbon home, a zero-carbon home certificate has been issued.

Low-carbon home

5.—(1) “Low-carbon home” means a dwelling-house that is energy efficient in relation to the aspects of energy efficiency in column 1 of Table 1 in the Schedule.

(2) The evidence to be adduced to show that a dwelling-house satisfies each relevant aspect of energy efficiency is set out in column 2 of that Table.

(3) Whether the requirements in column 2 of that Table are met shall be determined by an assessment of the dwelling-house by an accredited assessor.

Zero-carbon home

6.—(1) “Zero-carbon home” means a dwelling-house that is energy efficient in relation to the aspects of energy efficiency in column 1 of Table 2 in the Schedule.

(2) The evidence to be adduced to show that a dwelling-house satisfies each relevant aspect of energy efficiency is set out in column 2 of that Table.

(3) Whether the requirements in column 2 of that Table are met shall be determined by an assessment of the dwelling-house by an accredited assessor.

Application

8.—(1) Relief under these Regulations shall be claimed in an application made to the Department by the first occupier of a newly-constructed dwelling-house which shall be—

(a) in such a form and contain such information as the Department may reasonably require; and

(b) accompanied by—

(i) a low-carbon home certificate or a zero-carbon home certificate issued in respect of the dwelling-house;

(ii) a copy of an energy performance certificate issued in respect of the dwelling-house; and

(iii) such other documents as the Department may reasonably require.

(2) The closing date for an application under paragraph (1) shall be—

(a) in the case of a low-carbon home, 30th September 2013; and

(b) in the case of a zero-carbon home, 30th September 2016.

Decision and review by the Department

9.—(1) Where an application has been made under regulation 8, the Department shall decide whether the applicant is entitled to relief under these Regulations and shall serve notice of its decision on the applicant.

(2) Any person who is aggrieved by a decision of the Department under these Regulations may, within twenty-eight days of service of a notice of that decision on him, apply to the Department for a review by the Department of its decision.

(3) The Department shall serve on that person a notice of the result of the review.

Appeals to the Valuation Tribunal

10.—(1) If a person on whom a notice is served under regulation 9(3) is dissatisfied with the result of the review, he may appeal to the Valuation Tribunal.

(2) - .

THE FACTS

4. On the basis of the evidence and information provided, the tribunal determined the following facts:-

4.1 The hereditament consists of a dwellinghouse situated at 40 Ballyvalley Road, Mayobridge, Newry BT34 2RT (“the property”). The appellant is a ratepayer.

4.2 The Low Carbon Homes Scheme is an application-based scheme. The scheme makes reference to the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 which regulations specify that all properties completed after 30 September 2008 are required to have a New Build Energy Performance Certificate (or “EPC”).

- 4.3 Supporting documentation (referred to in Regulation 8 of the 2010 Regulations mentioned above) is required for any application under the scheme. Such documentation includes a Zero Carbon Certificate or a Low Carbon Certificate (these being referred to in Regulation 8 (1) (b) (i) of the 2010 Regulations), a New Build EPC (referred to in Regulation 8 (1) (b) (ii) of the 2010 Regulations) and a full Standard Assessment Procedure (or “SAP) report (referred to in Regulation 8 (1) (b) (iii) of the 2010 Regulations, the latter falling under the category of such other documents as the Department might reasonably require and such SAP report being obtained from an accredited assessor, as defined in the 2010 Regulations.
- 4.4 The Schedule to the 2010 Regulations provides at Table 1 and Table 2, respectively in regard to Low Carbon Homes (Table 1) and Zero Carbon Homes (Table 2), aspects of energy efficiency (Column 1) and evidence (Column 2) concerning the foregoing statutory provisions which are to be taken into account in the assessment of any property for compliance with the scheme’s qualifying provisions. (It is not necessary to recite the detail of the technical specifications for the purpose of this decision). The Department has produced fact sheets and written guidance to assist prospective applicants in regard to the evidence required and the applicable procedure.
- 4.5 By application form dated 30 June 2010 and signed by her, the appellant applied on her behalf and that of Mr Kenneth Curran for low carbon home rates relief to the Department. The application, which was accompanied by a letter and a copy EPC, was date-stamped as received by the Department on 14 July 2010. The application was not successful. This was because the Department took the view that there was no evidence presented with the appellant’s application that the property was low carbon and thus no evidence that the property consequently met the terms of the low carbon statutory scheme. The appellant had included with her application under the scheme a copy of an EPC dated 1 June 2010. This was identified by the Department as being an existing dwelling EPC (the certificate was identified by type as “*RdSAP, existing dwelling*”) and not a new build EPC, which latter was required by the Department. Significantly, the appellant did not present a Low Carbon Home Certificate. As this was an application and evidence-based scheme, the Department’s view was that insufficient evidence had been presented and accordingly the application was rejected.
- 4.6 Upon her application being rejected, the Department confirmed by letter dated 14 June 2010 to the appellant that the reason was that there was no Low or Zero Carbon Certificate supplied. The appellant was informed of her right to have the rejection decision reviewed. There was further correspondence by letter and email between the appellant and the Department and the Department sought to clarify the technical requirements of the scheme with the appellant. The matter was dealt with by the Department as a review matter and ultimately, by letter dated 18 November 2010 the outcome of the review was confirmed to the appellant by the Department. The Department clarified that there were two factors bearing upon the Department’s decision to reject the application, one of which was that it had not been established that the property was indeed low or zero carbon. There was another issue which featured significantly in the dealings between the appellant and the Department. That related to whether or not the property was deemed to be a “new” home for the

purposes of the scheme (and thus whether the appellant was the first occupier of a newly-constructed dwelling-house). This aspect of the dealings between the appellant and the Department concerned matters of evidence of occupation date and completion date in respect of the property.

THE CONTENTIONS OF THE PARTIES

5. The Department's contention was that there were fundamental matters of evidence raised in the case and that the property, on the basis of the deficiencies in the evidence supplied, did not comply with the provisions of the low carbon homes scheme. Such evidential matters required to be complied with by any applicant in seeking relief from rates under the terms of the scheme. The appellant had failed to prove that the property complied with the material provisions and thus the appellant was not entitled to relief under the scheme. The Department contended that the application had been properly rejected. The tribunal examined the content of the appellant's appeal and discussed the matter with the appellant, Mrs Curran, and with the Department's representative, Mr Peden. The tribunal was particularly concerned to establish with the appellant, in the light of the statutory specifications, the manner in which the appellant proposed to conduct the appeal in the absence of her having produced evidence to the Department that the property might qualify for the scheme, as there had been no Low or Zero Carbon Certificate supplied by the appellant to the Department. The appellant conceded forthrightly to the tribunal that she had not presented the required documentation with her application to the Department under the scheme's provisions. Indeed the appellant accepted, very candidly, that this was the case. She further accepted, again very candidly, that her appeal before this tribunal had no real prospects of success under these circumstances. The appellant indicated that she merely sought guidance from the tribunal concerning the future conduct of any dealings on her part with the Department in the light of any possible further expenditure which might have to be incurred by her.

THE TRIBUNAL'S DECISION

6. There were certain issues which the appellant sought to raise in this appeal. Such issues, for example, included the technical status of building control completion certificates (as evidence of first occupation of a newly-constructed dwelling-house). However, the tribunal's focus, of necessity, must be upon the central issue of whether or not the appellant had put forward proper grounds for an appeal against the Department's decision upon review, which decision had rejected the appellant's application for rating relief under the scheme's terms on the basis that one of the fundamental statutory evidential requirements, the Low or Zero Carbon Certificate, had not been provided. In this appeal the appellant herself has conceded that her application to the Department under the scheme was deficient and did not contain the required evidence. She has also conceded that her appeal to this tribunal stands no prospect of success and has made clear that this appeal is being pursued merely to seek guidance from the tribunal regarding her possible future dealings with the Department. The tribunal takes the view that this is not a proper use of the appeals process. The function of this tribunal is to adjudicate upon and to determine matters of appeal within the tribunal's statutory function. In doing so, the tribunal may also

provide more general guidance and commentary upon the operation of the law as it affects any one or more of the jurisdictional areas with which the Northern Ireland Valuation Tribunal is concerned.

7. Any appellant bringing an appeal to this tribunal under any of the statutory jurisdictions must do so properly upon the basis of fact and law. Any appellant to this tribunal must not proceed on a self-evidently misconceived basis or upon an understanding that the tribunal can be used as a forum to provide general guidance in an individual case when the appeal itself has no merit whatsoever and bears no prospects of success. Accordingly, without any difficulty and unanimously, the tribunal's conclusion is that the appeal is misconceived and has no prospects of success. The tribunal's decision is that the appeal is dismissed.

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

Date decision recorded in register and issued to parties:***16 May 2011***