



09TACD2024

Between:

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

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Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against a Notice of Assessment raised by the Revenue Commissioners (hereinafter the “Respondent”) on 28 June 2023 in the amount of €14,500 which is a clawback of 100% of the Help to Buy relief which the Appellant had previously been approved for and received pursuant to section 477C of the Taxes Consolidation Act 1997 (hereinafter the “TCA1997”).
2. The oral hearing of this appeal took place remotely on 24 October 2023.
3. The total amount of tax under appeal is €14,500.

Background

4. ██████████ (hereinafter the “Appellant”) is a Pay As You Earn taxpayer.
5. On 9 June 2017, the Appellant received mortgage approval from ██████████ in the amount of €220,000 in relation to the purchase of a property at ██████████ (hereinafter the “Property”).
6. One of the terms of the mortgage approval was that the mortgage required to be drawn down within six months of the date of the approval.
7. On 11 August 2017, the Appellant, as a first time property purchaser, initiated an application to the Respondent for Help to Buy relief pursuant to the provisions of section 477C of the TCA1997 (hereinafter the “Application”) in relation to the Property.
8. On 28 August 2017, the Appellant entered into a contract for sale relating to the Property, with a purchase price of €39,000 and a building agreement relating to the Property, with a contract price of €251,000.
9. On 13 September 2017 the Appellant initiated a claim under the Help to Buy scheme confirming that the purchase price for the Property was €290,000 and that the Loan amount relating to the Property was €220,000.
10. On 3 October 2017, the Appellant’s solicitor verified the Application on the Respondent’s online system.
11. On 6 October 2017, Help to Buy relief of €14,500 was paid by the Respondent directly into the Appellant’s bank account.
12. Delays in the construction of the Property occurred such that the construction of the Property was not completed within six months from the date of the mortgage approval.

13. As a result, the Appellant reapplied for mortgage approval and on 8 June 2018 the Appellant received mortgage approval from ██████████ in the amount of €200,000 in relation to the purchase of the Property.
14. The Appellant drew down a mortgage of €200,000 from ██████████ for the purchase of the Property.
15. On 28 August 2018 the Stamp Duty Return for the purchase of the Property by the Appellant was filed with the Respondent which recorded the purchase and transfer of the Property to the Appellant as occurring on 27 July 2018.
16. The Respondent commenced a compliance review of the Appellant's Help to Buy claim on 12 October 2022.
17. On 24 October 2022, the Respondent wrote to the Appellant and requested the Appellant to provide certain documentation relating to the Help to Buy relief received by him in 2018. In particular the Appellant was requested to submit a copy of the mortgage contract in relation to the Property which he had entered into.
18. On 23 June 2023, the Appellant submitted a letter from ██████████ dated 8 June 2018 which contained Particulars of Advance of the Loan and which recorded the value of the Loan advanced as being €200,000. The letter of 8 June 2018 also recorded the purchase price of the Property as being €290,000 with a Loan to Value of 68.97%.
19. On 28 June 2023, on completion of the compliance review, the Respondent informed the Appellant that the provisions of section 477C(11) of the TCA1997 required that the Loan to Value ratio in respect of a claim in relation to the Help to Buy scheme shall not be less than 70%.
20. The Respondent informed the Appellant that as the 68% Loan to Value ratio relating to the Property fell short of the statutory minimum of 70% provided for in section 477C(11) of the TCA1997 he was unable to satisfy the qualifying condition in relation to the Help to Buy scheme.
21. On 28 June 2023 the Respondent raised a Notice of Assessment in relation to the tax year 2017 seeking repayment of the Help to Buy relief paid to the Appellant in October 2017 in the amount of €14,500
22. By way of Notice of Appeal dated 21 July 2023 the Appellant appealed the decision of the Respondent.
23. The following documentation was submitted in this appeal:

- i. Letter of loan offer dated 9 June 2017 from [REDACTED] to the Appellant;
- ii. Copy building contract dated 28 August 2017;
- iii. Copy purchase contract dated 28 August 2017;
- iv. Copy of the Respondent's system outlining history of application and claim for Help to Buy relief by the Appellant
- v. Letter from Appellant's solicitor to [REDACTED] dated 31 July 2017;
- vi. Letter from the Appellant's solicitor to the solicitor for the Vendor dated 31 July 2017;
- vii. Letter from the Appellant's solicitor to the solicitor for the Vendor dated 24 August 2017;
- viii. Letter from the solicitor for the Vendor to the Appellant's solicitor dated 4 September 2017;
- ix. Email from Appellant to Appellant's solicitor dated 10 October 2017;
- x. Letter from [REDACTED] to Appellant's solicitor dated 8 June 2018;
- xi. Letter of loan offer from [REDACTED] dated the 8 June 2018;
- xii. Letter from Appellant's solicitor to [REDACTED] dated 25 June 2018;
- xiii. Letter from solicitor for the Vendor to the Appellant's solicitor dated 23 July 2018;
- xiv. Letter from Appellant's solicitor to the solicitor for the Vendor dated 24 July 2018;
- xv. Copy payment confirmation sheet dated 24 July 2018.
- xvi. Letter from the solicitor for the Vendor to the Appellant's solicitor dated 25 July 2018;
- xvii. Letter from the Appellant's solicitor to the solicitor for the Vendor dated 27 July 2018 (x2);
- xviii. Copy of Stamp Duty return filed on 28 August 2018;
- xix. Copies of correspondence between Appellant and Respondent from 24 October 2022 to 28 June 2023;
- xx. Joint Statement of Facts.

Legislation and Guidelines

24. The legislation relevant to this appeal is as set out below.

Section 477C of the TCA1997 – Help to Buy (as in force between 1 January 2017 and 31 December 2019)

“(1) *In this section—*

...

“first-time purchaser” means an individual who, at the time of a claim under subsection (3) has not, either individually or jointly with any other person, previously purchased or previously built, directly or indirectly, on his or her own behalf a dwelling;

...

“loan” means any loan or advance, or any other arrangement whatever, by virtue of which interest is paid or payable;

“loan-to-value ratio” means the amount of the qualifying loan as a proportion of the purchase value of the qualifying residence or the self-build qualifying residence;

...

“qualifying contractor” has the meaning assigned to it by subsection (2);

...

“qualifying loan”, means a loan, which—

(a) is used by the first-time purchaser wholly and exclusively for the purpose of defraying money employed in—

(i) the purchase of a qualifying residence, or

(ii) the provision of a self-build qualifying residence (including, in a case where such acquisition is required for its construction, the acquisition of land on which the residence is constructed),

(b) is entered into solely between a first-time purchaser and a qualifying lender (but this does not exclude a loan to which a guarantor is a party), and

(c) is secured by the mortgage of a freehold or leasehold estate or interest in, or a charge on, a qualifying residence or a self-build qualifying residence;

...

“qualifying residence” means –

(a) a new building which was not, at any time, used, or suitable for use as a dwelling, or

(b) a building which was not, at any time, in whole or in part, used, or suitable for use, as a dwelling and which has been converted for use as a dwelling,

and-

(i) which is occupied as the sole or main residence of a first time purchaser,

(ii) *in respect of which the construction work is subject to the rate of tax specified in section 46(1)© of the Value Added Tax Consolidation Act 2010, and*

(iii) *where the purchase value is not greater than –*

(I) *where in the period commencing on 19 July 2016 and ending on 31 December 2016, a contract referred to in subsection 3(a) is entered into between a claimant and a qualifying contractor or the first tranche of a qualifying loan referred to in subsection (3) (b) is drawn down by a claimant, €600,000 or*

(II) *in all other cases €500,000.*

...

“self-build qualifying residence” means a qualifying residence which is built, directly or indirectly, by a first-time purchaser on his or her own behalf;

...

(3) *Where an individual has, in the qualifying period, either—*

(a) *entered into a contract with a qualifying contractor for the purchase by that individual of a qualifying residence, that is not a self-build qualifying residence, or*

(b) *drawn down the first tranche of a qualifying loan in respect of that individual's self-build qualifying residence,*

that individual may make a claim for an appropriate payment.

...

(11)*The loan-to-value ratio in respect of a claim under this section shall not be less than 70 per cent.*

(18)(a)*Where—*

(i)*arising from a claim under this section, an appropriate payment is made to, or in respect of, a claimant, and*

(ii)*any condition that imposes a qualification, as respects the claimant, in relation to the making of an appropriate payment under this section is not satisfied by the claimant,*

the claimant shall, within 3 months from the date on which the appropriate payment is made, pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment, or part of such an amount, as appropriate.

...

(20) (a) Where a person who is liable to pay to the Revenue Commissioners an amount referred to in subsection (17)(b) or paragraph (a), (b), (c) or (d) of subsection (18) fails to pay that amount, a Revenue officer may, at any time, make an assessment or an amended assessment on that person for a year of assessment or accounting period, as the case may be, in an amount that, according to the best of that officer's judgement, ought to be charged on that person.

(b) A person aggrieved by an assessment or an amended assessment made on that person under this subsection may appeal the assessment or the amended assessment to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of assessment or amended assessment.

...

(21) An individual aggrieved by a decision by the Revenue Commissioners to refuse a claim under this section may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days of the notice of that decision."

Submissions

Appellant's Submissions

25. The Appellant submitted the following in his Notice of Appeal to the Commission:

"Please see below the history of events in relation to my Help to Buy Scheme application and the purchase of my property at address [REDACTED]

[REDACTED].

1) In spring 2017 I paid a deposit for the purchase of the new build property at [REDACTED]. The property was under construction at this stage and the purchase price of the property agreed was 290,000 euros.

- 2) *I then applied for mortgage approval to ██████ for the value of 220,000 euros, which was 76% of the purchase price. I was issued approval of this mortgage amount as a loan of offer from ██████ in June 2017.*
- 3) *Following mortgage approval I then applied for the Help to Buy Scheme in Autumn 2017. As part of this application process I provided a copy of the loan of offer (referred above in point 2) as proof of my intent to purchase the property. Following this application process I was approved and paid 14,500 euros in Autumn 2017 under the Help to Buy scheme.*
- 4) *There was a delay in completion of the property, and as such, I couldn't drawdown the mortgage that was approved in June 2017 until the property was completed. The approved loan of offer in June 2017 was valid for 6 months and the property was not completed before it expired in December 2017.*
- 5) *I had to re-apply for the mortgage in 2018. At this stage I had already received the payment from the Help to Buy scheme. I re-applied for the mortgage for a reduced amount of 200,000 euros. This amount is 69% of the value of the property. This loan of offer was approved and issued by ██████ in June 2018. The property was completed in July 2018 and I executed the sale at this point and signed the mortgage with ██████.*
- 6) *If Revenue had not already paid me out the sum of 14,500 euros, then my mortgage would have been changed and it would have been for the original amount of 220,000 euros, which is in excess of 70% threshold required.*

When I re-applied for the mortgage in 2018, I was genuinely not aware that my mortgage amount needed to be 70% or above in order to be compliant for the Help to Buy scheme. I had already received the money from the Help to Buy scheme in 2017 before I re-applied. My existing mortgage amount is for 69% of the property price and is marginally below the threshold for compliance. The reason my mortgage amount fell below the threshold is due to the fact that I received the funds from Revenue well before they were required and my financial institution took that into account when re-assessing my mortgage application. If the funds for the Help to Buy scheme were not paid to me in advance, then my mortgage re-application amount would have been the same as it was in 2017 and I would have met the criteria for the scheme as I did when first applying.

The above issue aside, I am a fully tax compliant PAYE worker. I hope that my explanation of the course of events outlined above will explain how this issue has come to pass. I am hoping my appeal will be successful and should you have any queries please contact me at the contact number or email address on the form.

Yours sincerely,

██████████”

26. The Appellant submitted the following in his Statement of Case:

“The matter in dispute is in relation to a payment I received in 2017 under the Help to Buy Scheme. I have been requested in 2023 to pay back the sum of money received in 2017 as it stated that my mortgage amount for the property was not at the threshold required to comply with the Help to Buy Scheme. However I was not aware of this at the time as I had received the funds before my final mortgage contract was executed. Please see below the history of events in relation to my Help to Buy Scheme application and the purchase of my property at address ██████████ ██████████.

- 1) In spring 2017 I paid a deposit for the purchase of the new build property at ██████████ ██████████. The property was under construction at this stage and the purchase price of the property agreed was 290,000 euros.*
- 2) I then applied for mortgage approval to ██████████ for the value of 220,000 euros, which was 76% of the purchase price. I was issued approval of this mortgage amount as a loan of offer from ██████████ in June 2017. I have attached a bank document named "Mortgage Approval 2017" which confirms this approval and terms of the proposed loan.*
- 3) Following mortgage approval I then applied for the Help to Buy Scheme in Autumn 2017. As part of this application process I provided a copy of the loan of offer in 2017 as proof of my intent to purchase the property. Following this application process I was approved and paid 14,500 euros in Autumn 2017 under the Help to Buy scheme. At this stage the mortgage was not executed or drawn down with the bank.*

- 4) *There was a delay in completion of the property, and as such, I couldn't draw down the mortgage that was approved in June 2017 until the property was completed. The approved loan of offer in June 2017 was valid for 6 months and the property was not completed before it expired in December 2017.*
- 5) *I had to re-apply for the mortgage in 2018. At this stage I had already received the payment from the Help to Buy scheme. I re-applied for the mortgage for a reduced amount of 200,000 euros. This amount is 69% of the value of the property. This loan of offer was approved and issued by [REDACTED] in June 2018. The property was completed in July 2018 and I executed the sale at this point and signed the mortgage with [REDACTED]. I have attached another bank document named "Mortgage Approval 2018" which confirms the updated loan terms. The mortgage was executed on the basis of this loan amount.*
- 6) *If Revenue had not already paid me out the sum of 14,500 euros, then my mortgage would have been changed and it would have been for the original amount of 220,000 euros, which is in excess of 70% threshold required.*

When I re-applied for the mortgage in 2018, I was genuinely not aware that my mortgage amount needed to be 70% or above in order to be compliant for the Help to Buy scheme. I had already received the money from the Help to Buy scheme in 2017 before I re-applied. My existing mortgage amount is for 69% of the property price and is marginally below the threshold for compliance. The reason my mortgage amount fell below the threshold is due to the fact that I received the funds from Revenue well before they were required and my financial institution took that into account when re-assessing my mortgage application. If the funds for the Help to Buy scheme were not paid to me in advance, then my mortgage re-application amount would have been the same as it was in 2017 and I would have met the criteria for the scheme as I did when first applying.

The above issue aside, I am a fully tax compliant PAYE worker. I hope that my explanation of the course of events outlined above will explain how this issue has come to pass. I am hoping my appeal will be successful and should you have any queries please contact me at the contact number or email address on the form.

Yours sincerely,

[REDACTED]

27. At the oral hearing of this appeal, the Appellant outlined to the Commissioner that on 9 June 2017 he had received mortgage approval in the amount of €220,000 from ██████████ based on a purchase price for the Property of €290,000. The property had not yet been built and on 28 August 2017 he entered into a contract for the purchase of the site and, in addition, a contract for the construction of the Property.
28. The Appellant paid a booking deposit of €7,000 to the auctioneer promoting the Property and he also paid a deposit of €22,000 on execution of the contract for the purchase of the site and the contract for the construction of the Property.
29. The Appellant stated that this was the basis on which he had applied for, and received approval for, Help to Buy relief in the amount of €14,500 which was paid directly into his bank account on 6 October 2017.
30. The Appellant stated that various delays had resulted in the construction of the Property and that, due to the terms of the mortgage approval of 9 June 2017 which was valid for a period of six months, he was required to reapply for mortgage approval in 2018. He stated that he received a new mortgage approval from ██████████ on 8 June 2018 in the amount of €200,000 from ██████████ based on a purchase price for the Property of €290,000. This, he stated, was the amount of mortgage which he drew down for the purchase of the Property.
31. The Appellant stated that his original mortgage approval for €220,000 in June 2017 represented a loan to value ratio of 76% and that the second mortgage approval for €200,000 in June 2018 represented a loan to value ratio of 69%.
32. The Appellant stated that the Help to Buy relief of €14,500 which he received in October 2017, along with the delay in completing the construction of the Property, allowed him to reduce the amount of mortgage which he required to draw down.
33. He stated that at the time of applying for the Help to Buy scheme, it was on the understanding that the application was checked and that he qualified for the relief.
34. The Appellant stated that, at the time of the reapplication for the mortgage and at the time of the draw down of the mortgage, he had not been advised that the amount of the new mortgage would cause his loan to value ratio to fall outside of the terms of the Help to Buy scheme. He stated that the terms of the Help to Buy scheme were out of his mind at the time of the reapplication for the mortgage.

35. The Appellant stated that, if at the time of the reapplication for the mortgage he had been aware of the loan to value requirement under the Help to Buy scheme he would have applied for, and drawn down, a mortgage in the amount of €203,000 which would have brought him to a 70% loan to value ratio.

Respondent's Submissions

36. The Respondent submitted that the provisions of section 477C(11) of the TCA1997 require that the loan to value ratio in respect of a claim for Help to Buy relief shall not be less than 70 per cent.

37. The Respondent further submitted that as the loan to value ratio of the mortgage drawn down by the Appellant in respect of the Property was 68.96%, the Appellant did not fall within the terms of the Help to Buy scheme which have been legislated for.

38. As a result, the Respondent submitted that, the Appellant was not eligible for the Help to Buy scheme and that 100% of the €14,500 Help to Buy relief paid to him in October 2017 should be repaid.

Material Facts

39. The Commissioner notes that a Joint Statement of Facts was submitted by the Parties to this appeal. In the Joint Statement of Facts, 13 of the 20 points included were agreed between the Parties, with 7 of the 20 points being marked either as being a "matter for evidence" or "not agreed". During the course of the hearing, following the opening of documents to the Commissioner and/or queries from the Commissioner, all of the 20 points included in the Joint Statement of Facts were agreed by both Parties.

40. As a result, the material facts of this appeal are not at issue between the Parties and the Commissioner finds the following as the material facts in this appeal:

- i. The Appellant is a Pay As You Earn taxpayer;
- ii. On 9 June 2017, the Appellant received mortgage approval from [REDACTED] in the amount of €220,000 in relation to the purchase of the Property;
- iii. One of the terms of the mortgage approval was that the mortgage required to be drawn down within six months of the date of the approval;
- iv. On 11 August 2017, the Appellant, as a first time property purchaser, initiated an application to the Respondent for Help to Buy relief pursuant to the provisions of section 477C of the TCA1997 in relation to the Property;

- v. On 28 August 2017, the Appellant entered into a contract for sale relating to the Property, with a purchase price of €39,000 and a building agreement relating to the Property, with a contract price of €251,000;
- vi. The Property was a self-build qualifying residence as defined in section 477C(1) of the TCA1997;
- vii. On 13 September 2017 the Appellant initiated a claim under the Help to Buy scheme confirming that the purchase price for the Property was €290,000 and that the Loan amount relating to the Property was €220,000;
- viii. On 3 October 2017, the Appellant's solicitor verified the Application on the Respondent's online system;
- ix. On 6 October 2017, Help to Buy relief of €14,500 was paid by the Respondent directly into the Appellant's bank account;
- x. Delays in the construction of the Property occurred such that the construction of the Property was not completed within six months from the date of the mortgage approval;
- xi. As a result, the Appellant reapplied for mortgage approval and on 8 June 2018 the Appellant received mortgage approval from ██████████ in the amount of €200,000 in relation to the purchase of the Property;
- xii. The Appellant drew down a mortgage of €200,000 in July 2018 from ██████████ for the purchase of the Property;
- xiii. The loan to value ratio of the mortgage was 68.96%;
- xiv. The mortgage of €200,000 from ██████████ drawn down in July 2018 by the Appellant was a qualifying loan as defined in section 477C of the TCA1997;
- xv. On 28 August 2018 the Stamp Duty Return for the purchase of the Property by the Appellant was filed with the Respondent which recorded the purchase and transfer of the Property to the Appellant as occurring on 27 July 2018;
- xvi. The Respondent commenced a compliance review of the Appellant's Help to Buy claim on 12 October 2022;
- xvii. On 24 October 2022, the Respondent wrote to the Appellant and requested the Appellant to provide certain documentation relating to the Help to Buy relief received by him in 2018. In particular the Appellant was requested to submit a copy of the mortgage contract in relation to the Property which he had entered into;

- xviii. On 23 June 2023, the Appellant submitted a letter from [REDACTED] dated 8 June 2018 which contained Particulars of Advance of the Loan and which recorded the value of the Loan advanced as being €200,000. The letter of 8 June 2018 also recorded the purchase price of the Property as being €290,000 with a Loan to Value ratio of 68.97%;
- xix. On 28 June 2023, on completion of the compliance review, the Respondent informed the Appellant that the provisions of section 477C(11) of the TCA1997 required that the Loan to Value ratio in respect of a claim in relation to the Help to Buy scheme shall not be less than 70%;
- xx. The Respondent informed the Appellant that as the 68% Loan to Value ratio relating to the Property fell short of the statutory minimum of 70% provided for in section 477C(11) of the TCA1997 he was unable to satisfy the qualifying condition in relation to the Help to Buy scheme;
- xxi. On 28 June 2023 the Respondent raised a Notice of Assessment in relation to the tax year 2017 seeking repayment of the Help to Buy relief paid to the Appellant in October 2017 in the amount of €14,500;
- xxii. By way of Notice of Appeal dated 21 July 2023 the Appellant appealed the decision of the Respondent.

Analysis

41. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof, as in all taxation appeals, is on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

“This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”

42. There is no dispute between the Parties that the purchase price of the Property was €290,000.

43. There is no dispute between the Parties that the Property was a self-build qualifying residence within the meaning of section 477C of the TCA1997.

44. There is further no dispute between the Parties that the Appellant drew down a mortgage from [REDACTED] of €200,000 in relation to the Property.

45. Section 477C(1) of the TCA1997 defines a “qualifying loan” as meaning:

“a loan, which —

(a) is used by the first-time purchaser wholly and exclusively for the purpose of defraying money employed in—

(i) the purchase of a qualifying residence, or

(ii) the provision of a self-build qualifying residence (including, in a case where such acquisition is required for its construction, the acquisition of land on which the residence is constructed),

(b) is entered into solely between a first-time purchaser and a qualifying lender (but this does not exclude a loan to which a guarantor is a party), and

(c) is secured by the mortgage of a freehold or leasehold estate or interest in, or a charge on, a qualifying residence or a self-build qualifying residence;”

46. There is no dispute between the Parties that the mortgage of €200,000 drawn down by the Appellant is a loan which was used by the Appellant as a first time purchaser, wholly and exclusively for the purpose of defraying money employed in the provision of a self-build qualifying residence. There is further no dispute that the loan of €200,000 drawn down by the Appellant is a loan which is secured by the mortgage of a freehold or leasehold interest in, or a charge on, a qualifying residence or self-build qualifying residence.

47. Loan to value ratio is defined in section 477C of the TCA1997 as meaning the amount of the qualifying loan as a proportion of the purchase value of the qualifying residence or the self-build qualifying residence

48. Section 477C(11) of the TCA1997 provides that the loan to value ratio in respect of a claim for Help to Buy relief shall not be less than 70%.

49. The Commissioner has already found as a material fact that the loan to value ratio of the mortgage was 68.96%.

50. The use of the word “*shall*” as set out in section 477C(11) of the TCA1997, indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which the amount of the loan to value ratio of a qualifying loan may be reduced.

51. As a result of the loan to value ratio of the mortgage drawn down by the Appellant being less than 70%, the Commissioner finds that the Appellant did not fall within the terms of the Help to Buy scheme provided for in section 477C of the TCA1997.

52. Section 477C(18)(a) of the TCA1997 provides that where:

“(i) arising from a claim under this section, an appropriate payment is made to, or in respect of, a claimant, and

(ii) any condition that imposes a qualification, as respects the claimant, in relation to the making of an appropriate payment under this section is not satisfied by the claimant,

the claimant shall, within 3 months from the date on which the appropriate payment is made, pay to the Revenue Commissioners an amount equal to the amount of the appropriate payment, or part of such an amount, as appropriate.”

53. The Commissioner has no authority or discretion to direct that the amount of repayment as specified in section 477C(18) of the TCA1997 may be reduced.

54. Therefore, it follows that, as the Appellant did not fall within the terms of the Help to Buy scheme provided for in section 477C of the TCA1997, the Appellant must repay the amount of €14,500 to the Respondent that being 100% of the Help to Buy relief which was paid by the Respondent in October 2017 in relation to the Property.

55. The Commissioner notes that the application for Help to Buy relief was made by the Appellant on the basis that, at the time of the application, the Appellant intended to draw down, and had received mortgage approval for, a mortgage of €220,000 for the purchase of the Property for €290,000. This represented a loan to value ratio of 75.86%. The Commissioner also notes that this was the basis on which the Respondent approved the application for Help to Buy relief.

56. The Commissioner has no doubt as to the *bona fides* of the Appellant and accepts that, at the time of the application for Help to Buy relief, the Appellant fully intended, and indeed understood, that he came within the terms of the Help to Buy scheme.

57. The Commissioner also accepts the Appellant's *bona fides* in his submission that the delay in the construction of the Property allowed him to reduce the final amount of the mortgage which he in fact drew down.

58. This is an unfortunate situation where the Appellant did not appreciate the impact which his decision to reduce the amount of the mortgage draw down from €220,000 to €200,000

would have on his eligibility for the Help to Buy scheme. Had the Appellant drawn down €203,000 of a mortgage he would have fallen within the terms of the Help to Buy scheme.

Determination

59. Having considered the facts and circumstances of this appeal, together with the evaluation of the documentary and oral evidence as well as the submissions from both Parties, the Commissioner determines that the Appellant has not succeeded in establishing that the Respondent was incorrect in determining that the provisions of section 477C(18) of the TCA1997 required that the Appellant should repay an amount equal to 100% of the Help to Buy relief received by him in relation to the Property.
60. The Commissioner determines that the Appellant should repay the amount of €14,500 to the Respondent, that being 100% of the Help to Buy relief which was paid by the Respondent in October 2017 in relation to the Property.
61. It is understandable that the Appellant will be disappointed with the outcome of his appeal. The Appellant was correct to check to see whether his legal rights were correctly applied.
62. The Commissioner appreciates and acknowledges the helpful, courteous and efficient manner in which both the Appellant and Respondent conducted this appeal.
63. This Appeal is determined in accordance with Part 40A of the TCA1997 in particular section 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA1997.

Notification

64. This determination complies with the notification requirements set out in section 949AJ of the TCA1997, in particular section 949AJ(5) of the TCA1997 and section 949AJ(6) of the TCA1997. For the avoidance of doubt, the Parties are hereby notified of the determination under section 949AJ of the TCA1997 and in particular the matters as required in section 949AJ(6) of the TCA1997. This notification under section 949AJ of the TCA1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The Parties shall not receive any other notification of this determination by any other methods of communication.

Appeal

65. Any party dissatisfied with the determination has a right of appeal on a point or points of law only to the High Court within 42 days after the date of the notification of this

determination in accordance with the provisions set out in section 949AP of the TCA1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Clare O'Driscoll
Appeal Commissioner
26 October 2023