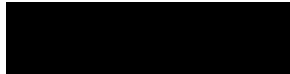




13TACD2024

Between



Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is the Appellant's appeal of an assessment of the Revenue Commissioners ("the Respondent") of 3 October 2022 in the amount of €17,000 made under section 477C(20) of the Taxes Consolidation Act 1997 ("the TCA 1997"). This provision allows for the recovery by the Respondent of an "appropriate payment" previously made to a person or persons under "Help to Buy", a statutory scheme designed to afford first-time buyers of residential property income tax relief for the purpose of assisting them in their purchase.
2. It may be helpful to observe at this point of the determination that section 477C of the TCA 1997 makes provision for assistance to first-time buyers in respect of two categories of residential property. Firstly, those that constitute a "*qualifying residence*" (being a newly built residential property or an existing building not previously so used or suitable for such use but converted to residential use) and, secondly, those constituting a "*self-build qualifying residence*" (being a qualifying residence that is built directly or indirectly by the first-time buyer or buyers themselves). It may also be helpful to observe that for a property

to constitute a qualifying residence under Help to Buy, it must be purchased from a person registered with the Respondent as a “*qualifying contractor*”.¹

3. This appeal proceeded by way of oral hearing that occurred on 12 October 2023. In making this determination the Commissioner had the benefit of written and oral legal argument.

Background

4. The factual background to this appeal was not in dispute and was as set out hereunder.
5. The Appellant and his wife were at all times material to this appeal assessed to tax jointly pursuant to section 1017 of the TCA 1997.
6. On 14 November 2020 the Appellant and his wife made a joint application for Help to Buy relief under section 477C(6)(a) of the TCA 1997. This application was made in respect of the purchase of a property at [REDACTED] (“the property”).
7. In oral evidence the Appellant accepted that the property was at this stage substantially complete, having been constructed on or about 2007 by the vendor, [REDACTED] (“the vendor”). The property had, however, never been lived in by the vendor or anybody else. It was an agreed fact in this appeal that the vendor was not registered with the Respondent as a “*qualifying contractor*”.
8. The Appellant gave evidence that he and his wife sought advice from the solicitor acting for them in the purchase of the property regarding whether they, as first time buyers, were entitled to avail of the Help to Buy scheme. He said that the advice given was that the property did not qualify under the scheme as a ‘new build’, but might qualify as a ‘self-build’ given that certain works needed to be carried out to it following the purchase.
9. The Appellant said that the nature of these were “*works on the outside of the property, the gardens and things that weren’t finished [...] some extra insulation and things like that in the house.*”²
10. On 23 November 2020 the Appellant’s solicitor filed a stamp duty return and paid stamp duty on behalf of the Appellant and his wife. On the stamp duty return the property was described as a second hand dwelling.

¹ To be so registered it is necessary for the contractor to fulfil the criteria enumerated in section 477C(2) of the TCA 1997. The specifics of these criteria are not relevant to the determination of this appeal;

² Transcript, page 9;

11. On 24 November 2020 the Appellant and his wife made a claim for Help to Buy relief under section 477(3) of the TCA 1997 in the amount of €17,000 on the basis that the property was a self-build qualifying residence. On the same date the Appellant's solicitor verified the claim, as required by section 477C(15) of the TCA 1997. Payment in the amount of €17,000 issued to the Appellant on 27 November 2020.
12. The Appellant accepted in evidence that he and his wife acquired the property in completed form.
13. The state of the property upon purchase and the nature of the aforementioned post-purchase works to be carried out were further evidenced by a valuation report that the Appellant and his wife furnished as part of their joint application for Help to Buy relief. The report stated the "*Stage of Completion*" of the property at that point to be "*complete*" and it to be "*fully built*". It further stated that all services were connected and opined that the property's general condition was "*very good*".
14. The Appellant and his wife used the payment constituting relief from income tax received under Help to Buy to carry out works improving the interior and exterior state of the property.
15. On 16 May 2022 the Respondent commenced a review of the joint claim made by the Appellant and his wife.
16. On 3 October 2022 the Respondent made an "*assessment of appropriate payment*" under section 477C(20) of the TCA 1997 in the Appellant's name. It did so on the grounds that it did not consider the property to be a "*self-build qualifying property*" in respect of which income tax relief under Help to Buy could be claimed.

Legislation and Guidelines

17. Section 477C of the TCA 1997 provides income tax relief to assist first-time buyers in the obtaining of funds necessary for the deposit required to purchase or build their first home.
18. Section 477C(1) of the TCA 1997 sets out definitions and, insofar as relevant, provides:-

“[...]”

‘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.

[...]

‘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)(c) 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

19. Section 477C(3) of the TCA 1997 provides:-

"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."

Submissions

Appellant

20. The Appellant accepted in submission that by the letter of the law the property in respect of which he and his wife had sought Help to Buy relief was neither a *"qualifying residence"* nor a *"self-build qualifying residence"*. Rather, he said that it fell somewhere between these two stools.

21. The Appellant submitted however that the claim was within the spirit of the Help to Buy scheme. They had made their application in good faith and had used the funds received solely for the finishing of the property. He submitted that the Respondent's decision, which sought repayment of the relief given along with interest, penalised them in circumstances where Help to Buy was created with the opposite aim of assisting persons in a similar position to them to acquire a first home.

Respondent

22. In written argument the Respondent submitted that Help to Buy relief could only be claimed in respect of a property not previously *"used or suitable for use"* as a dwelling and then *"converted for use as a dwelling"* if it fell within the statutory definition of a *"qualifying property"*. With regard to a *"self-build qualifying residence"*, the prior use and state of the building was irrelevant. This was because it had to be *"built, directly or indirectly, by a first time purchaser on his or her own behalf"*.

23. However, at hearing counsel for the Respondent resiled from the above submission and accepted that, in principle, “*built, directly or indirectly, by a first time purchaser*” could include the conversion of a pre-existing building, unsuitable for use as a dwelling, for residential use.
24. Counsel submitted however that this concession was immaterial to the outcome of the appeal in circumstances where, on the Appellant’s own evidence and as evidenced by his and his wife’s own documentary material relating to the purchase, the works carried out to the property constituted improvements. What the Appellant had purchased was in fact a building that was previously “*suitable for use [...] as a dwelling*”. The consequence of this was that the property was not a “*qualifying self-build residence*” and relief could not be allowed. It was submitted that the assessment appealed should stand.

Material Facts

25. The facts material to this appeal were not in contention and were as follows:-
- on 14 November 2020 the Appellant and his wife made a joint application for Help to Buy relief under section 477C(6)(a) of the TCA 1997 in respect of the property;
 - the condition of the property at this stage was very good and was suitable for use as a dwelling;
 - on 23 November 2020 the Appellant’s solicitor filed a stamp duty return and paid stamp duty on behalf of the Appellant and his wife. On the stamp duty return the property was described as a second hand dwelling;
 - on 24 November 2020 the Appellant and his wife made a claim for Help to Buy relief under section 477(3) of the TCA 1997 in the amount of €17,000 on the basis that the property was a self-build qualifying residence.
 - Also on 24 November 2020 the Appellant’s solicitor verified the claim, as required by section 477C(15) of the TCA 1997;
 - payment in the amount of €17,000 issued to the Appellant and his wife on 27 November 2020;
 - the Appellant and his wife acquired the property in completed form;
 - the Appellant and his wife used the payment of €17,000 to carry out works improving the interior and exterior state of the property;

- on 3 October 2022 the Respondent made an assessment of appropriate payment under section 477C(20) of the TCA 1997.

Analysis

26. The Respondent argued in this appeal that one can only obtain Help to Buy relief in respect of a property that is a “qualifying residence” that is either a new build or a self-build and that the property, being suitable for use a dwelling long before it was purchased in November 2020 from somebody who was not a “qualifying contractor”, came within neither definition. The Appellant did not in fact dispute this but argued that his appeal should be allowed based on the grounds of fairness and with regard to the overall purpose of Help to Buy.
27. In *Lee v Revenue Commissioners [2021] IECA 18*, the Court of Appeal held that the function of an Appeals Commissioner is limited to assessing whether tax is owed, and if so in what amount, by reference to the legislation decided on and enacted by the Oireachtas. It was further held that an Appeals Commissioner hearing an appeal does not have jurisdiction in making their determination to depart from the meaning of the relevant legislation on the grounds of fairness or equity.
28. The Commissioner has sympathy for the Appellant and his wife and accepts that they applied for Help to Buy in good faith believing that they were entitled to it. Nevertheless, on the basis of the uncontested fact that they purchased a property that was at the time of purchase in such a condition that it was suitable for use as a dwelling – notwithstanding the need for improvement works – they were not entitled under the legislation to avail of the relief received. The Commissioner is not empowered to exercise discretion in allowing the Appellant and his wife to avail of the scheme in circumstances where they do not satisfy a condition attaching to it – specifically that the property must previously have been unused or unsuitable for use as a dwelling. As such, the Commissioner finds that the appeal must fail and the assessment of the Respondent of 3 October 2022 must stand affirmed.

Determination

29. The assessment of 3 October 2022 under appeal stands affirmed. The Commissioner appreciates that the outcome of this appeal might be disappointing to the Appellant and his wife but is of the view that they were correct to check their rights by bringing the appeal.

30. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

31. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

32. Any party dissatisfied with the determination has a right of appeal to the High Court on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Conor O'Higgins
Appeal Commissioner
03 November 2023.