



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

66TACD2026□

Between

[REDACTED]

**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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satisfied that the Appellant was “*prevented by absence, sickness or other reasonable cause*” from making the appeal in time, where the appeal is made thereafter without unreasonable delay. There are additional requirements to be met where an appeal is made more than 12 months late, but those requirements are not relevant to this appeal.

13. Having considered the Appellant’s explanation for the delay, along with supporting documentation to substantiate the position, the Commissioner is satisfied that it is appropriate to consider and determine the substantive appeal, notwithstanding that it was made late. It is noted that the Respondent did not object to the Commission accepting the Appellant’s late appeal.
14. The Appellant submitted a notice of appeal and accompanying documentation in support of its appeal. Each party provided a statement of case, and the Respondent submitted an outline of arguments.

### **Legislation and Guidance**

15. The legislation relevant to the substantive issue in this appeal, as in force at the material time, is set out below.

#### **SDCA 1999**

16. Section 83D(3)(a) of the SDCA 1999 provides as follows:

*“Subject to subsection (18) and the other provisions of this section, stamp duty paid on an instrument may be repaid in accordance with this section in relation to the land if construction operations on the land commence pursuant to a commencement notice within the period of 30 months following the date of execution of the instrument.”*

17. Section 83D(5)(a) of the SDCA 1999 states, among other things, that:

*“Where the satisfaction of any of the following –*

*(i) the condition specified in paragraph (a) of subsection (3),*

*...*

*is prevented by -*

*(I) an appeal made under section 7 of the Building Control Act 1990, or*

*(II) an order made by a court requiring that construction operations cease to be carried out,*

*the period commencing on the making of the appeal or the making of the order by the court and ending on the determination of the appeal or the discharge of the order shall not be reckoned for the purpose of computing the period of 30 months specified in subsection (3)(a) ...”*

*Building Control Act, 1990*

18. Section 7 of the Building Control Act, 1990 provides, among other things, as follows:

*“(1) An applicant who is dissatisfied with the decision of a building control authority on an application pursuant to—*

*(a) section 4, for a dispensation from, or relaxation of, any requirement of building regulations, or*

*(b) section 6(2)(a)(ii), for a fire safety certificate, or*

*(c) section 6(2)(a)(iii), for a certificate of approval, or*

*(d) section 6(2)(a)(vii), for a regularisation certificate, or*

*(e) section 6(2)(a)(ix), for a disability access certificate,*

*may appeal to An Bord Pleanála.*

*(2) An Bord Pleanála, after consideration of an appeal under this section, shall either (as it thinks proper) refuse the appeal or allow the appeal subject, where it thinks fit, to the attachment, amendment or deletion of conditions.*

*...”*

**Evidence and Submissions**

*Architect’s letter dated 28 March 2025*

19. A letter dated 28 March 2025 from the architects for the development on the Site was tendered in evidence by the Appellant. A relevant extract reads as follows:

*“We have been requested to comment on the circumstances that have led to a delay in the commencement of works to the above property, and the resulting implications for the Residential Development Stamp Duty Refund Scheme. We are the Architects for the development and were appointed in [REDACTED] 2020.*

*We note that the Execution of the Deed of Transfer for the property took place on the [REDACTED] February 2021. To be eligible for the Residential Development Stamp Duty*



21. The oral evidence given by the Witness was consistent with the information contained in the Appellant's notice of appeal and statement of case, an extract of which is reproduced below.

*Appellant's submissions*

22. The Appellant's notice of appeal and statement of case contained similar information, and the oral submissions made on its behalf were consistent with that information. For brevity, the Commissioner has included only an extract from the Appellant's statement of case as follows:

*"The Claim was not approved as the commencement notice and start of construction date, December 2024 did not meet the deadline of 30 months since the execution of the Deed of Transfer.*

*[The Appellant] accepts the fact that the claim was not submitted within the statutory timeframe of 30 months from the Deed of Transfer.*

*An unforeseeable delay of ■ months and ■ days arose due to the occurrence of the following circumstances beyond the reasonable control of [the Appellant]:*

- 1. The impact of the Covid 19 Pandemic (Force Majeure)*
- 2. Confusion, misinformation, misguidance and communication delays on part of [the Authority]*
- 3. ■ issue relating to ■ (Condition ■) ■.*

*[The Appellant] is seeking a review of the decision rejecting the Stamp Duty Section 38D [sic] Claim and requesting the granting of an extension to the 30-month timeframe for submission of the claim in light of the circumstances beyond its control, outlined above.*

*In support of the request, a Letter from [the Appellant's architect] dated 28 March 2025 in relation to the impact of the above issues is on record. previously submitted to [the Respondent] on 4 March 2025 [sic: 4 March 2025 predates the date of the letter], and will be resubmitted by email on or about the date of this submission.*

**THE IMPACT OF THE COVID 19 PANDEMIC**

*The execution of the Deed of Transfer of the property took place on ■ February 2021. Covid restrictions remained in place and from that early stage [the Appellant] encountered CASHFLOW problems resulting from closures and loss of revenue. This*



*The above highlight the ongoing challenging nature of this build adding to the constantly increasing and somewhat unmanageable costs on an ongoing basis. Submissions in support of the appeal in relating to the planning difficulties were previously submitted to [the Respondent] on [REDACTED] 2025 and will once again be resubmitted with this submission.”*

#### *Respondent’s submissions*

23. The Respondent submitted that the Appellant is not entitled to a repayment of stamp duty on the basis that the construction operations did not commence within the statutory time limit following the date of execution of the deed of transfer.
24. The Respondent also submitted in writing, among other things, as follows:

*“Reviewing the Notice of Appeal (dated 13.05.2025) forwarded by [the Commission], [the Respondent] noted that it is stated that planning issues were a contributing factor to the delay in building commencing. This was not brought to [the Respondent’s] attention as part of the S83D claim. Since receipt of the appeal, [the Respondent] contacted the Appellant asking for further details regarding the planning issues. Documentation was submitted to [the Respondent] by the Appellant on 01.07.2025 ...*

*Section 83D(5)(a) provides for two specific circumstances where the 30-month clock [i.e. S83D(3)(a)] can be paused. That is, the period allowed for construction to commence following the Date of Execution of the instrument.*

*These circumstances are where, (I) an appeal is submitted to An Bord Pleanála or (II) where a Court Order is issued for construction operations to cease. None of the documentation provided to [the Respondent] ... indicates that either of these scenarios apply in this case.”*

#### **Material Facts**

25. Having considered the documentation submitted, and having heard the evidence and the submissions of the parties at the hearing, the Commissioner makes the following findings of material fact:
  - 25.1. The Appellant is a private company limited by shares.
  - 25.2. The Appellant completed the acquisition of the Site by means of a deed of transfer.
  - 25.3. The deed of transfer was executed on [REDACTED] February 2021.

- 25.4. On ■ February 2021, the Site consisted solely of land, without any complete or incomplete buildings on it.
- 25.5. The stamp duty return in relation to the acquisition of the Site was filed on 19 April 2021.
- 25.6. The consideration stated on the stamp duty return was €495,000.
- 25.7. The stamp duty liability declared on the stamp duty return was €37,125, which equates to 7.5% of the consideration.
- 25.8. The stamp duty liability was discharged in four payments as follows:

<u>Date of payment</u>	<u>Amount paid</u>
19 April 2021	€9,900
23 April 2021	€10,000
26 April 2021	€10,000
29 April 2021	<u>€7,225</u>
	<b>€37,125</b>

- 25.9. The stamp certificate was issued on 3 June 2021.
- 25.10. The Appellant acquired the Site for the purposes of residential development.
- 25.11. Issues relating to planning permission contributed to the delay in commencing construction works on the Site.
- 25.12. On ■ March 2021, a pre-planning submission was made to the Authority in relation to a proposed development on the Site.
- 25.13. On ■ April 2021, the Authority responded to the pre-planning submission.
- 25.14. On ■ June 2022, an application for planning permission was submitted to the Authority. The application was declared invalid by the Authority.
- 25.15. On ■ July 2022, an application for planning permission was submitted to the Authority. The Authority granted planning permission in respect of the application,

subject to conditions. The final grant of planning permission was issued on ■ November 2022.

25.16. ■  
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25.17. ■  
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25.18. ■  
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25.19. The Appellant did not submit any appeals to An Bord Pleanála in respect of any decision of the Authority.

25.20. No court has made an order requiring cessation of the construction works.

25.21. On ■ December 2024, a commencement notice was submitted to the Authority.

25.22. On ■ December 2024, that commencement notice was acknowledged by the Authority as valid.

25.23. On ■ December 2024, construction works commenced on the Site in respect of a residential building.

25.24. On 31 January 2025, the Appellant sought a repayment of stamp duty under the residential development stamp duty refund scheme.

25.25. On 28 February 2025, the Respondent notified the Appellant that it had refused its claim for a repayment of stamp duty on the basis that the construction works had not commenced within 30 months following the date of execution of the deed of transfer.

25.26. On 13 May 2025, the Appellant appealed to the Commission.

## **Analysis**

### *Burden of proof*

26. The burden of proof in this appeal rests on the Appellant to establish that the Respondent erred in refusing its claim for a repayment of stamp duty.

27. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners and Anor.* [2010] IEHC 49 (“*Menolly Homes*”), Charleton J. stated at paragraph 22, among other things, that:

*“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.”*

28. Additionally, in *Hanrahan v. The Revenue Commissioners* [2024] IECA 113 (“*Hanrahan*”), the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only. The court stated, among other things, that:

*“97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake. ...*

*98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law; ... Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner’s correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation. ...”*

29. This appeal concerns the correct interpretation of the legislation governing claims for repayment of stamp duty made under section 83D of the SDCA 1999, and its application to the facts of this appeal.

30. The standard of proof applicable in this appeal is the balance of probabilities.

### *The Commissioner's jurisdiction*

31. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. It is independent of the Respondent.
32. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997.
33. The Court of Appeal's judgment in *Lee v. Revenue Commissioners* [2021] IECA 18 ("*Lee*") is authoritative as to the Commission's jurisdiction. In *Lee*, Murray J. stated at paragraph 20, among other things, that:

*"The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by [the TCA 1997], and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of [the TCA 1997] or must arise by necessary implication from the terms of that legislation."*

34. The Commissioner refers further to *Lee*, wherein Murray J. stated at paragraph 76:

*"The jurisdiction of the Appeal Commissioners ... under those provisions of [the TCA 1997] in force at the time of the events giving rise to these proceedings and relevant to this appeal ... is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of [the TCA 1997]. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of [the TCA 1997] may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether [the Respondent is] precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether [the Respondent has] acted in connection with the issuing or formulation of the assessment"*

*in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid.”*

35. While *Lee* concerned assessments raised before the enactment of the Finance (Tax Appeals) Act 2015, and the statutory analysis was therefore based on the older legislation, Part 40 of the TCA 1997, the overarching analysis of Murray J. is applicable to Part 40A of the TCA 1997.
36. It follows from the judgment in *Lee* that the Commissioner does not have jurisdiction to modify or disapply statutory provisions.
37. It is also useful to cite the following extract from paragraph 12 of the judgment of Charleton J. in *Menolly Homes*:

*“Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation.”*

#### *Substantive issue*

38. In this appeal, the Commissioner’s role is to consider whether the Appellant is entitled to a repayment of stamp duty in accordance with the provisions of section 83D of the SDCA 1999.
39. There is no controversy between the parties as to the Appellant’s entitlement to the repayment sought save for the issue in relation to when construction operations commenced on the Site.
40. In considering the substantive issue in this appeal, consistent with the judgment in *Hanrahan*, the Commissioner is required to apply the appropriate canons of construction in interpreting the relevant legislative provisions.
41. It is clear from the line of recent authority, including the Supreme Court judgments in *The People (DPP) v. Brown* [2018] IESC 67 (“*Brown*”), *Dunnes Stores v. The Revenue Commissioners* [2019] IESC 50 (“*Dunnes*”), *Bookfinders Ltd. v. The Revenue Commissioners* [2020] IESC 60 (“*Bookfinders*”), *Heather Hill Management Company CLG and Anor. v An Bord Pleanála* [2022] IESC 43 (“*Heather Hill*”) and *Hanrahan*, that the starting point of an interpretative exercise in an appeal of this nature is to consider the ordinary and natural meaning of the wording of the statute itself, viewed in context.
42. Applying the principles of statutory interpretation enunciated in *Brown*, *Dunnes*, *Bookfinders* and *Heather Hill*, the Commissioner is satisfied that no further rules of

interpretation are required; the wording of the relevant provisions is plain and self-evident, viewed in context.

43. Section 83D(3)(a) of the SDCA 1999 provides as follows:

*“Subject to subsection (18) and the other provisions of this section, stamp duty paid on an instrument may be repaid in accordance with this section in relation to the land **if construction operations on the land commence pursuant to a commencement notice within the period of 30 months following the date of execution of the instrument.**”* (Emphasis added)

44. The Appellant does not dispute that the construction operations on the Site commenced on ■ December 2024.

45. It is common ground that the deed of transfer, which is the relevant instrument, was executed on ■ February 2021.

46. Having regard to those dates, it is evident that construction operations did not commence within a period of 30 months following the date of execution of the deed of transfer.

47. Section 83D(5)(a) of the SDCA 1999 provides that certain periods of time shall be disregarded when computing the 30-month period. The circumstances in which this arises are restricted to situations where a claimant is prevented from complying with the 30-month time limit by an appeal made under section 7 of the Building Control Act, 1990 or a court order requiring that construction operations cease to be carried out. In the present case, the Witness confirmed that neither circumstance had arisen.

48. While the Commissioner accepts that matters relating to planning permission contributed to the delay in commencing construction operations on the Site, absent the circumstances legislated for in section 83D(5)(a) of the SDCA 1999, the law makes no allowance. This remains the case irrespective of whether the delays associated with planning permission are attributable to the Appellant, the Authority or another party. It also remains the position where delays arise by reason of force majeure or challenging commercial circumstances.

49. As the Commissioner is satisfied that construction operations did not commence within a period of 30 months following the date of execution of the deed of transfer, and as section 83D(5)(a) of the SDCA 1999 does not assist the Appellant, it follows that the appeal cannot succeed.

50. The Commissioner recognises that the Appellant’s circumstances are unfortunate and is empathetic to the circumstances described on appeal. However, the Commissioner’s jurisdiction is limited to considering and applying tax law, and he has no equitable power

or wider discretion to modify or disapply statutory provisions. In that respect, it is noted that section 83D of the SDCA 1999 affords no discretion to the Commissioner.

### **Determination**

51. Having considered the evidence adduced and all the material submitted by the parties, for the reasons set out above, the Commissioner is satisfied that the Respondent was correct to refuse the Appellant's claim for a repayment of stamp duty.
52. The Respondent's decision of 28 February 2025 shall stand.
53. This appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AL. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

54. 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**

55. Any party dissatisfied with the determination has a right of appeal 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.

A handwritten signature in black ink, appearing to read 'Conor Walsh', with a long, sweeping horizontal stroke above the name.

Conor Walsh  
Appeal Commissioner  
14 April 2026