



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

242TACD2025

Between

██████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal by ██████████ (“the Appellant”) to the Tax Appeals Commission (“the Commission”) against the refusal by the Revenue Commissioners (“the Respondent”) of his application for relief under the Help To Buy (“HTB”) scheme, on the ground that, at the time his mortgage was entered into, the valuation of his property did not satisfy the loan-to-value (“LTV”) requirement of HTB. The Appellant claimed that the original valuation of the property was an error and that a subsequent valuation showed that he qualified for HTB.
2. In accordance with the provisions of section 949U of the Taxes Consolidation Act 1997 as amended (“TCA 1997”), this appeal is determined without a hearing.

Background

3. On 30 April 2025, the Appellant and his wife applied for the HTB scheme, and stated that the value of their property on completion would be €343,000. On 12 May 2025, the Appellant proceeded to the claim stage of the application process. He submitted a valuation report, which stated that the value on completion would be €390,000.

4. On 21 May 2025, the Respondent notified the Appellant that, based on the valuation report submitted, the LTV ratio of his property was 61%, as his mortgage was in the amount of €240,000. It further stated that, as the minimum LTV ratio for HTB relief is 70%, he did not qualify under the scheme. The Respondent confirmed its position in correspondence with the Appellant on 13 June 2025.
5. The Appellant claimed that the valuation report was in error, as his broker had based the valuation on build cost rather than market value. On 24 June 2025, the Appellant appealed against the Respondent's decision to the Commission. On 21 August 2025, the Commission notified the parties that the Commissioner considered the appeal suitable for determination without an oral hearing, pursuant to section 949U of the TCA 1997. They were informed that they could object to the Commissioner proceeding without an oral hearing within 21 days of the notice, and that they could also submit any additional documentation that they wished the Commissioner to consider within 21 days. Neither party objected to the appeal being determined without a hearing. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

Legislation and Guidelines

6. Section 477C(1), Help to Buy, of the TCA 1997 defines "approved valuation", in relation to a self-build qualifying residence, as "*the valuation of the residence that, at the time the qualifying loan is entered into, is approved by the qualifying lender as being the valuation of the residence*".
7. Section 477C(1) defines "purchase value", in the case of a self-build qualifying residence, as "*the approved valuation*".
8. Section 477C(1) defines "loan-to-value ratio" as, *inter alia*, "*the amount that is the aggregate of... the amount of the qualifying loan... as a proportion of the purchase value of the qualifying residence or the self-build qualifying residence, as the case may be*".
9. Section 477C(1) defines "self-build qualifying residence" as "*a qualifying residence which is built, directly or indirectly, by a first-time purchaser on his or her own behalf*".
10. Section 477C(3) states that "*Where an individual has, in the qualifying period... 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. Section 477C(11) states that "*The loan-to-value ratio in respect of a claim under this section shall not be less than 70 per cent.*"

12. The Respondent's Tax and Duty Manual, Part 15-01-46 on the HTB scheme, states *inter alia* that

"1. Introduction...

The HTB payment is provided at deposit stage following the signing of a contract to purchase or, in the case of a self-build, following the drawdown of the first tranche of the relevant mortgage...

5.4.2. Approved Valuation of a self-built property

The approved valuation of a self-built property is the valuation of the property at the time the mortgage was entered into...

7.4 Loan-to-Value Ratio (LTV)

HTB is only available where a mortgage is taken out to purchase or build a home, and where the value of the qualifying loan is a minimum of 70% of the 'purchase value'/'approved valuation' of the property. The 'purchase value' of a property cannot be less than its market value for the purposes of this calculation.

In general, only mortgage loans from qualifying lenders are considered in calculating the 70% loan-to-value ratio..."

Submissions

Appellant

13. In his notice of appeal, the Appellant stated that

"We [were] approved for the help to buy scheme and my wife's share of the grant was paid out to our account. Then we [were] told we [were] not eligible for the grant a couple of days later and need to pay back the money. Roughly €8600.

It turns out our broker miscalculated and did not give us enough to get to the 70% loan to value. He based the 70% off the build cost and not the market value and tailored our mortgage to suit that. We have since been engaging with him and [the Respondent]. We are getting our mortgage increased to bring us above the threshold and that should make us eligible for the grant. But [the Respondent] is shutting us down saying that we won't be eligible because at the time of our first drawdown we did not meet the threshold.

This was an honest mistake by our broker, who we trusted with all the details and now we are going to [lose] nearly €30,000 because of it.

With this new loan offer we will be above the threshold for the help to buy scheme.”

14. In his statement of case, the Appellant stated that

“In April of this year my wife and I applied for and [were] approved for the help to buy scheme. My wife’s portion of the claim was paid out to the amount of E8667.83. A few days later we [were] contacted to say we no longer qualified for the scheme and must refund the money already paid out.

We [were] under guidance of our mortgage broker when making the claim and [were] depending on it. He had informed us we needed our mortgage to be 70% of the build cost, we took him at his word and tailored our mortgage and build to suit this. Little did we know that it was actually 70% of the market value we needed.

We qualified for a higher loan that would take us past the threshold for the help to buy scheme. We have since gone back to that higher offer and now do meet the threshold. But [the Respondent] will not entertain our pleas at all.

No matter what we say they just repeat the fact that we did not qualify because our mortgage was only 62% of the market value at the point of our first drawdown.

This was a mistake by our broker and he has admitted that, but it is us who stand to [lose] nearly E30,000 for an error in the guidance we received from him.

We feel that we should be given a second chance because it was no fault of our own and now we do qualify if we were fresh applicants.

We are really depending on this to be able to finish our home for ourselves and two young children.

I really hope you can help us.”

Respondent

15. In its statement of case, the Respondent stated *inter alia* that

“On 21 May 2025 following a review of the submitted documentation from the Appellant, the Respondent contacted the Appellant and confirmed per the valuation report submitted, the value on completion was €390,000 and not €343,000 as included in the original HTB claim application.

The Respondent further noted because of this, the Loan to Value (LTV) percentage was now determined to be 61% which meant the Appellant was not eligible for the HTB Scheme.

On 12 June 2025, the Appellant confirmed they had drawdown their first tranche of their mortgage. On 12 June 2025, the Respondent stated as they had already drawdown their mortgage when the LTV ration was not 70% or above, they failed to meet the eligibly criteria for the HTB scheme.

[...]

The Appellant made a claim for HTB in respect of a self-build qualifying residence. The Appellant's lender confirmed that the approved valuation of the property at the time the loan was entered into was €390,000. The Appellant has an approved mortgage of €240,000 with their lender [REDACTED]. The Appellant entered into a mortgage agreement with their lender on [REDACTED] 2025. The loan-to-value ratio for the Appellant's mortgage is 61%. The minimum loan-to-value ratio for HTB relief is 70%. In the case of a mortgage in respect of the construction of a new home, its value must be the lower of the cost of land plus cost of construction or the estimated value of the completed property. The Respondent sympathises with the Appellant in this matter but has no discretion with how the legislation is applied. The Respondent respectfully submits that this appeal must fail as the Appellant has not demonstrated how the Respondent has misapplied the relevant legislation in respect of their eligibility to the HTB scheme."

Material Facts

16. Having read the documentation submitted by the parties, the Commissioner makes the following findings of material fact:
 - 16.1. On 30 April 2025, the Appellant and his wife applied for the HTB scheme, and stated that the value of their property on completion would be €343,000.
 - 16.2. On 12 May 2025, the Appellant proceeded to the claim stage of the application process. He submitted a valuation report, which stated that the value on completion would be €390,000.
 - 16.3. The Appellant's mortgage was in the amount of €240,000. The approved valuation of the Appellant's property at the time the loan was entered into was €390,000. Therefore, the Respondent calculated that the LTV ratio was 61%, which was less than the 70% minimum requirement under the HTB scheme.
 - 16.4. The Respondent refused the Appellant's claim under the HTB scheme on the ground that the LTV ratio was not 70% or above. On 24 June 2025, the Appellant appealed against the Respondent's decision to the Commission.

Analysis

17. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 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.*”
18. Additionally, in *Hanrahan v The Revenue Commissioners* [2024] IECA 113, 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 *inter alia* 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.....”
19. This appeal concerns the correct interpretation of the legislation governing the HTB scheme, and its application to the facts of the appeal. The HTB scheme was introduced by section 9 of the Finance Act 2016, which inserted section 477C into the TCA 1997. The scheme provides for the making of a payment to assist first time buyers to obtain a deposit to purchase or build their first home. The HTB payment is provided at deposit stage, or in the case of a self-build, following the drawdown of the first tranche of the relevant mortgage, and takes the form of a repayment of income tax. The HTB scheme has been extended on a number of occasions since its introduction. Most recently, the Finance Act 2024 extended the scheme to 31 December 2029.
20. In this appeal, the Appellant has contended that he is entitled to relief under HTB in respect of his self-build property. He has stated that the valuation of his property was incorrect, and that their broker wrongly believed that the relevant LTV ratio was based on build cost rather than market value. He has stated that this has been rectified and that he has agreed a higher mortgage offer.

21. The Respondent refused the application on the ground that the LTV ratio was 61%, which was less than the 70% minimum required under the HTB scheme. It has stated that, as the Appellant drew down the first tranche of the mortgage when the LTV was less than 70%, he does not qualify for relief under the HTB scheme.
22. Section 477C(1) of the TCA 1997 sets out various definitions in respect of the HTB scheme. The LTV ratio, for the purposes of this appeal, is defined as "*the amount that is the aggregate of... the amount of the qualifying loan... as a proportion of the purchase value of the ... self-build qualifying residence*". "Purchase value", in the case of a self-build qualifying residence, is defined as "*the approved valuation*". Importantly, "approved valuation" in the case of a self-build qualifying residence is defined as "*the valuation of the residence that, at the time the qualifying loan is entered into, is approved by the qualifying lender as being the valuation of the residence*" (emphasis added).
23. Therefore, the valuation that is relevant for the purposes of HTB is the valuation at the time the Appellant entered into the mortgage agreement with the bank. The Appellant has not challenged or disagreed with the statement of the Respondent that the valuation of the property at the time he entered into the mortgage agreement with ██████ was stated to be €390,000. Furthermore, it is not in dispute that the amount of the Appellant's mortgage at first drawdown was €240,000. Consequently, the Respondent calculated the LTV ratio to be 61%.
24. However, section 477C(11) of the TCA 1997 provides that "*The loan-to-value ratio in respect of a claim under this section shall not be less than 70 per cent.*" Therefore, the Commissioner is satisfied that the Respondent correctly concluded that the Appellant did not qualify under the HTB scheme, as the LTV ratio in respect of his property was less than 70%.
25. The Appellant has stated that he has subsequently agreed to take out a larger mortgage in order to satisfy the LTV ratio requirement. No evidence of a larger mortgage having been incepted by the Appellant has been provided to the Commission. In any event, the Appellant has accepted that he has already drawn down the first tranche of his mortgage, and consequently the Commissioner agrees with the Respondent that the Appellant does not qualify for relief under HTB.
26. The Commissioner considers that the circumstances of this appeal are unfortunate, and he appreciates that this determination will be disappointing for the Appellant. However, he is obliged to interpret and apply the legislation governing HTB as enacted by the Oireachtas, and for the reasons set out above, he is satisfied that the Respondent

correctly concluded that the Appellant's property did not qualify for relief. Consequently, the appeal is unsuccessful.

Determination

27. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent's decision to refuse the Appellant relief under the Help to Buy scheme was correct, and the decision stands.
28. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL and 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

29. 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

30. 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.



Simon Noone
Appeal Commissioner
3 October 2025