Appeal No. VA04/2/018

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Trabolgan Holiday Centre **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Holiday Complex at Lot No. 2A.5.19a, Trabolgan Holiday Homes, Trabolgan, Midleton/Corkbeg, County Cork

B E F O R E

John O'Donnell - Senior Counsel	**Chairperson**
Michael F. Lyng - Valuer	**Member**
Brian Larkin - Barrister	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF AUGUST, 2004

By Notice of Appeal dated the 7th day of April, 2004 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €3,275.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"(i) Valuation excessive and inequitable (without prejudice we attach reasons as submitted on Appeal to the Commissioner of Valuation) (2) No Material Change of Circumstances has occurred since property last revised (3) The Commissioner's Decision that hitherto 'relevant property not rateable' is now 'relevant property' is incorrect (4) Property was not properly listed and listing by Local Authority did not refer to valuing 'relevant property' (5) Valuation is bad in law without prejudice to foregoing. Part of premises is 'relevant property not rateable' as per Schedule 4, Valuation Act, 2001."

INTRODUCTION:

The premises the subject matter of this appeal is a holiday village with 143 self-catering residential houses, reception area, shop, restaurant, bar, indoor swimming pool, bars, sports hall, go-kart track, pitch and putt course, tennis courts and other sports facilities. The property in question is situated near Whitegate, County Cork.

In previous valuations the self-catering residential houses had been characterised as domestic hereditaments and valued as such. Because of the provisions of the Local Government (Financial Provisions) Act, 1978 such domestic hereditaments benefited from an abatement of rates, i.e. the hereditaments in question were assessed and valued but an allowance equivalent to the amount of the rate was granted so that the rate was effectively abated.

The remainder of the property in question being the "commercial area" was assessed for rates and a value fixed in respect of the appropriate rates payable. The commercial area did not benefit from the relevant provisions of the 1978 Act so rates were levied and paid on that commercial area. This splitting of the property for rating purposes continued in various revisions of the rates during the 1980s, 1990s and indeed in the year 2000.

THE 2003 REVISION

Following the passing of the Valuation Act, 2001 the Trabolgan property was the subject of a further revision. The property was listed for revision on the 13th February 2003 by Cork County Council. The instructions in relation to the revision were as follows:

> "*Revise as necessary to:*
>
> *(1) Value aparthotel on this lot and all other premises used for the purposes of the trade of hotel keeping.*

(2) Value "Go-Kart" track, astro-turf, soccer court and all other alterations and improvements for Trabolgan Holiday Homes Limited.

(3) Value all other developments."

Mr. Frank Twomey was appointed revision officer to carry out the revision in question on the 12th March 2003.

On the 28th May 2003 GVA Donal O'Buachalla, Rating Consultants instructed by the Appellant made submissions in relation to the revision which Mr. Twomey was undertaking. These submissions were made in writing.

On the 10th July 2003 Mr. Twomey issued his proposed Valuation Certificate, pursuant to the provisions of Section 29(1) of the Valuation Act, 2001 ("the 2001 Act"). Under the same section he also gave notice to the Appellant that it had 28 days within which to make representations to him as revision officer in relation to the matter in question.

No such representations were made by the Appellant, which was satisfied with the revision in question. It is notable that the proposed Valuation Certificate described the property in question as a "holiday complex". Mr. Twomey in carrying out the revision in question evidently did not regard the self-catering houses as being an aparthotel or aparthotels. We are satisfied that notwithstanding the suggestion made that he value the property in question as an aparthotel, Mr. Twomey as revision officer was entitled to reach his own conclusions on this matter. He clearly did so and (it is apparent) concluded that the property in question was not an "aparthotel". Mr. Twomey also compiled a valuation report in which he concluded "*NAV attributable to residential units now deleted as relevant property not rateable."* He concluded in his report of the 4th June 2003 that the self-catering accommodation was not rateable and could not be regarded as being part of an "aparthotel" as defined in the Act.

THE LETTER OF AUGUST 11 2003

However on the 11th August 2003 a letter issued from the Valuation Office to Mr. Twomey. Dated, and headed "Trabolgan Record No. 988170 Revision 2003" it reads:

"*Mr. Twomey,*

I have read your report on the subject premises and I note the contents. I have had discussions with William Walsh (Managing Valuer) and Declan Lavelle (Staff Valuer) in respect of the rateability issue here.

I now wish to advise you that the policy of the Valuation Office in relation to the current revision of the subject relevant property is that it be classified as List Rateable pursuant to the Valuation Act, 2001.

You are directed to issue a proposed Certificate of Valuation accordingly to include an aggregate valuation which comprehends all the holiday accommodation which was previously included in this valuation.

(Signed) Frank Gregg, Staff Valuer"

On foot of that letter a second proposed Valuation Certificate was issued on the 11th August 2003. It purported to increase the valuation from the previous figure of €1,625 to €3,275. The explanation for this increase appears in the report provided under the heading

"*Observations:*

(i) MCC (Material change of circumstances).
See memo from F. Gregg. The V.O. has decided as a matter of policy that the entire property should be categorised as "list rateable" and that all

> *the holiday accommodation be included in the valuation. I have amended the NAV/RV accordingly."*

Representations were made to the revision officer on the 5th September 2003 following which a Valuation Certificate issued on the 10th September 2003. This Valuation Certificate set the figure for valuation at €1,625 which was inconsistent with the second proposed Certificate. On discovery of this error a second Valuation Certificate then issued on the 12th September 2003. It set out the valuation figure of €3,275.

Although the valuation figure was ultimately increased it is perhaps worthy of comment that the description of the premises remained the same, i.e. the premises were still described as a "holiday complex".

The Appellants appealed to the Commissioner of Valuation. The appeal valuer was Frank Twomey. The staff valuer was Frank Gregg. In November 2003 the appeal was refused. The grounds given were:

> "*Valuation Office policy is that the entire complex is a relevant property that comes under Schedule 3 of the Valuation Act, 2003.* (sic) *There has been no change in VO approach to this matter since the representations were made when the proposed certificate was issued. The Valuation Certificate issued on the 12th September should not be amended. RV of €3,275 should stand."*

From this outcome the Appellant now appeals to this Tribunal.

THE SUBMISSIONS:

The Appellant, through its counsel, Donal O'Donnell SC, made detailed submissions on the various legal issues which arose. Those submissions can be categorised as:

(a) Submissions in respect of the alleged procedural infirmities giving rise to the issue of the Valuation Certificate.

(b) Submissions in relation to the substantive issue, i.e. the issue of whether or not the law should be interpreted so as to render the premises previously described as domestic hereditaments (and now domestic premises) rateable.

At the conclusion of the Appellant's submissions and before evidence was called counsel for the Respondent, James Connolly SC, indicated that having regard to the procedural difficulties outlined he did not oppose the appeal and would not object to our allowing the appeal. He made it clear however that he did not wish to be regarded as conceding that the arguments on the substantive issue were also correct and expressly reserved his position on that issue for another day. While the Appellants indicated they would rather have a ruling on both the procedural and substantive issues, they conceded (correctly in our view) that if we were able to decide to allow the appeal on the procedural grounds alone, it would not be necessary for us to consider or determine the substantive issue.

DETERMINATION:

We have decided to allow the appeal and to reinstate the original valuation figure of €1,625.

In reaching this conclusion we have only considered the submissions made by the Appellants on the procedural issues (which the Respondent did not oppose at the hearing). We have not considered the submissions made in the substantive issue and they do not form part of the reasoning for our determination to allow the appeal.

In our view the appeal should be allowed and the RV of €1,625 reinstated for the following reasons:

(a) Section 28 of the 2001 Act requires the Commissioner of Valuation to appoint an officer to carry out a revision which officer is described as a "revision officer". The officer is appointed to exercise in relation to the properties in question the powers expressed by the Section to be exercisable by a revision officer. Section 28(4) states that:

> "*A revision officer, if he or she considers that a material change of circumstances which has occurred since a valuation under section 19 was last carried out…may…*
>
> *(i) amend the valuation of that property as it appears on the list,*
> *(ii) exclude that property from the list on the grounds that the property is no longer relevant property, that the property no longer exists or that the property falls within Schedule 4,*
> *(iii) amend any other material particular in relation to that property as it appears on the list,"*

In our view the Commissioner has no power, express or implied, to direct the revision officer as to how he should exercise his powers. The revision officer is obliged to make his own decision in this regard. We were referred to **McLoughlin –v- The Minister for Social Welfare [1958] IR 1** and **The State (Rajan) –v- The Minister for Industry and Commerce [1988] ILRM 231**. Both of these cases are authority for the proposition that a person who is obliged to perform a duty imposed on him by virtue of legislation emanating from the Oireachtas is required to perform that duty fairly and freely without interference. **Rajan** in particular makes it clear that it is particularly inappropriate for the person or body who would in effect be the Appellate body designated to hear any appeal from a decision of such an officer to attempt to interfere with or direct that officer as to how to go about making its decision or what decision to make.

> We are of the view that the Commissioner of Valuation had no statutory power express or implied (whether acting through Mr. Gregg or otherwise) to direct the revision officer, Frank Twomey as to whether or not the premises should be regarded as rateable. This was a matter for Mr. Twomey alone. Mr. Twomey was entitled to hear such submission as he saw fit. We note that it is not suggested that there was any *mala fides* on the part of the Commissioner or Mr. Gregg in giving the direction in question to Mr. Twomey. However for the reasons which we have outlined and having regard to the authorities referred to above we believe that the Valuation Certificate subsequently issued on the 12th September 2003 cannot stand and that the appeal against the issuing of that Valuation Certificate must be allowed.

(b) The Appellants also suggest that there was no material change of circumstances justifying the revised valuation. They say (as is apparent from the consideration on the 9th September 2003 of the representations made by the Appellant) that the Commissioner simply decided that part of the property not previously a relevant property is now a relevant property and that that constitutes a material change of circumstances.

Having regard to the definition of "material change of circumstances" contained in Section 3 of the Act we do not believe that a change of opinion or policy on the part of the Commissioner can of itself constitute a material change of circumstances under the Act. Mr. O'Donnell points to the requirement that some "event" occurs before such a material change of circumstances can occur. In our view this is correct. A change of policy or approach by the Commissioner of Valuation cannot of itself constitute a material change of circumstances. Mr. O'Donnell also suggests to permit a change of policy by the Commissioner to constitute a material change of circumstances would be inconsistent with the requirement set out in Section 28(4) which obliges the appointed revision officer to make his decision. Section 28(4) provides:

> *"A revision officer, if <u>he or she considers</u> that a material change of circumstances which has occurred since a valuation under section 19 was*

last carried out in relation to the rating authority area in which the property concerned is situate …" (emphasis added).

In our view this is correct. Since a change of policy by the Commissioner cannot of itself constitute a material change of circumstances I do not believe that there was a valid material change of circumstances existing. Insofar therefore as the Valuation Certificate issued is issued on the premise that there has been a material change of circumstances, in our view no such material change of circumstances exist and the Valuation Certificate is therefore invalid. For this reason also we conclude that the appeal must be allowed.

(c) The Appellants also made further submissions in relation to the procedural route followed leading to the issue of the Valuation Certificate in question. They contended that there was no statutory jurisdiction to issue a second Valuation Certificate (proposed). Certainly the provisions of Section 29(3) of the 2001 Act do not appear to envisage a second proposed Certificate being issued. Rather they appear to envisage that the revision officer having heard submissions on his proposed Certificate may then decide either to issue an amended Certificate or to issue the Certificate in its original proposed form. On one view there is no statutory jurisdiction to issue such a second proposed Valuation Certificate though it is unnecessary for us to decide this issue. However, in view of the fact that we have already decided on the first and second grounds argued by the Appellant that the appeal must be allowed, and having regard to the fact that no arguments were made by the Respondent on this issue, we prefer to leave for another day the matter of whether the issuance of a second proposed Valuation Certificate is fatal to the actual Valuation Certificate subsequently issued.

(d) The Appellants also contend that Mr. Twomey did not carry out his functions within the six months from the date of his appointment provided for under Section 28(5) of the 2001 Act. Mr. O'Donnell contends that because the Valuation Certificate bearing the "correct" figure for valuation (being €3,275) only issued

on the 12th September 2003 (outside of the six month period) that Valuation Certificate must be regarded as being null and void and of no effect.

Again the Respondent did not make submissions in relation to this issue. It is thus unclear to us whether the original Valuation Certificate issued on the 10th September contained the wrong figure either as a result of a clerical slip or otherwise. Nor were we addressed on whether a Valuation Certificate issued within the six month period could be amended outside of that period. Nor were we addressed on whether the date of the issuing of the Valuation Certificate is the date of the exercise of the revision officer's power to make a decision under Section 28 of the Act. Having regard to these matters and having regard to the fact that we have already decided to allow the appeal on the grounds set out above we reserve for another day a determination on this point.

The Appellant's appeal is allowed. The RV in the Valuation Certificate is hereby amended to read €1,625.