

Appeal No. VA00/2/054

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**Burlington Express (Ireland) Ltd. t/a Bax Global**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Warehouse/Warerooms at Map Reference 2JK/Unit R, Townland of North Ring Business Park, Turnapin Great: ED: Airport, RD: Airport, Co. Dublin.

**B E F O R E**

**Fred Devlin - FSCS. FRICS.**

**Deputy Chairman**

**Rita Tynan - Solicitor**

**Member**

**Michael Coghlan - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 6TH DAY OF DECEMBER, 2000**

1 By Notice of Appeal dated the 2nd day of the August 2000, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £636 on the above described hereditament.

2 The grounds of appeal are that "the valuation is inequitable and bad in law. Appellants have no record of any pre revision notice being received in accordance with Section 3(4)(a) of the 1988 Act. Additionally a copy notice subsequently produced by Fingal County Council amounts to late notification in that it would not have allowed the appellant sufficient time to take advice and make proper submissions prior to the revision issue of the 9th November '99. Thus the appellant seeks to have the revision set aside."

3. The appeal proceeded by way of an oral hearing, which took place on the 20<sup>th</sup> October 2000 at the Tribunal Offices at Ormond House, Ormond Quay, Dublin 7. Mr. Eamonn Halpin ASCS ARICS MIAVI appeared on behalf of the appellant and Mr. Noel Rooney, a District Valuer in the Valuation Office appeared on behalf of the respondent.
4. At the hearing Mr. Halpin stated at the outset that quantum was not an issue and the grounds of the appeal were: -
  - That the list of hereditaments requiring revision prepared by Fingal County Council dated 10<sup>th</sup> October 1999 was not in accordance with Section 3 (2)(b) of the Valuation Act 1988.
  - That the letter dated 11<sup>th</sup> October issued by Fingal County Council notifying the appellant that their premises were listed for revision constituted a “late notice” and as such was equivalent to non-notification in accordance with section 3 (4)(a).
5. It is common case that Burlington Express (Ireland) Ltd. trading as Bax Global occupy the subject hereditament under the terms and conditions of a twenty five year lease from the 5<sup>th</sup> May 1999 and moved into the premises in September 1999 after the completion of certain fit-out works.
6. In the context of this appeal the following are the relevant dates and events which are material to this Tribunal in determining the issues before it.
  - a) **10<sup>th</sup> September 1998** – Fingal County Council forwarded to the Commissioner of Valuation a list of hereditaments requiring revision including Map Reference No 2J Turnapin Great, Townland. The nature of the revision required was “revise as necessary to include 4 warehouse units (N,O,Q & R) with offices in North Ring Business Park”.
  - b) **10<sup>th</sup> July 1999** – Fingal County Council forwarded to the Commissioner a list of hereditaments requiring revision including Map Reference No 2F Turnapin Great

Townland. The nature of revision required was “ revise to value new warehouses/offices – North Ring Business Park.”

- c) **10<sup>th</sup> October 1999** – Fingal County Council forwarded to the Commissioner of Valuation a list of hereditaments requiring revision including Map Reference No 2K, Turnapin Great, Townland. The nature of revision required was “ revise as necessary to include warehouses unit (K) with offices in North Ring Business Park.”
  - d) **11<sup>th</sup> October 1999** – Fingal County Council wrote to Burlington Express (Ireland) Ltd. t/a Bax Global at unit R, North Ring Business Park and informed them that a number of hereditaments including the subject premises had been listed for revision.
  - e) **8<sup>th</sup> October 1999** – A copy of the valuation was prepared by the revising valuer and marked approved by the Supervising valuer on the 27<sup>th</sup> October 1999.
7. Mr. Brian Brady of the Finance Office of Fingal County Council gave evidence to the effect that a large portion of his time was spent identifying occupiers of new premises in the various industrial estates so that they could be notified at the appropriate time that their premises had been listed for revision. It was not part of his function to prepare the lists of hereditaments requiring to be forwarded to the Commissioner of Valuation. On the 7<sup>th</sup> of October, he was advised that the subject premises had been listed for revision and as a consequence, he issued the letter of notification dated the 11<sup>th</sup> October 1999 as referred to at paragraph 4 (d) above.
8. The first issue to be addressed in relation to this appeal is whether or not the list dated the 10<sup>th</sup> of October, 1999 is in accordance with section 3 (2)(b) of the Valuation Act Section 3(2)(b) states –
- “the rating authority shall submit to the Commissioner of Valuation a list of all applications made in the month beginning on the commencement of this section or in any succeeding month, in each case within ten days after the end of that month.”*

9. Mr. Halpin submitted that since the list was dated the 10<sup>th</sup> October 1999, there was a possibility that hereditaments could have been added to this list after the end of September 1999 but advanced no reason or argument to support this contention. He also drew attention to the fact that the document had not been stamped when received by the Valuation Office but agreed that nothing turned on this point. However in response to a question from Mr. Rooney, Mr. Halpin agreed that the list dated the 10<sup>th</sup> September 1998 was sufficient to enable the Commissioner of Valuation to carry out a revision of the subject property.
  
10. As part of the documentary evidence submitted, there are copies of three listings forwarded to the Commissioner dated the 10<sup>th</sup> September 1998, the 10<sup>th</sup> July 1999 and the 10<sup>th</sup> October 1999 respectively. It is clear from these documents that it is the practice of Fingal County Council to submit the list of hereditaments requiring revision on the last day of the period as provided for in the section 3(2)(b). To infer from this practice that Fingal County Council would include applications received within the ten-day period from the end of the preceding month is a proposition that the Tribunal is not prepared to consider without some evidence of a probative nature. To do otherwise would be to accept that it is the practice and policy of Fingal County Council to act in a manner outside the provisions of Section 3. Accordingly therefore the Tribunal is satisfied that the County Council complied with section 3(2)(b) in compiling the list dated the 10<sup>th</sup> October 1999 and indeed other lists forwarded to the Commissioner of Valuation as previously referred to.
  
11. The second issue to be addressed is whether or not the letter dated the 11<sup>th</sup> October 1999 sent to the appellant by Fingal County Council is in compliance with section 3(4)(b).

Mr. Halpin accepted at the hearing that the notice was indeed properly served but contended that it was received leaving insufficient time for the appellant to take “proper advice and make meaningful representations to the Valuation Office particularly as the revising valuer had completed his report and valuation on the 8<sup>th</sup> October 1999.”

12. In the course of the hearing the Tribunal was referred to a number of previous decisions dealing with notification including *John Pettitt and Son Ltd. v Commissioner of Valuation (VA95/5/015)*. In the Pettitt case the Tribunal considered the question of notification in some detail and reviewed all of the important decisions on this issue and on page 19 of the judgement set out what general principles could be both identified and deduced therefrom and at pages 20 and 21 went on to say as follows:

- (a) “When the issue is in a *bona fide* way so raised then the onus is on and remains on the Respondent to prove compliance with Section 3(4)(a).
- (b) The validity of the application for revision is dependent on compliance with the section where it so applies.
- (c) Non-compliance results in the revision being declared invalid.
- (d) In none of the judgments, when non-compliance was established, was the question of prejudice/injustice as a possible excusing factor for such non-compliance, relied upon.
- (e) The *ratio decidendi* of the Topline judgment was that the issue of notification could not be raised before the Tribunal as it had not been raised before the Commissioner at first appeal stage. All other views so expressed were *obiter*.
- (f) No time or time limit is expressly mentioned in the section by which compliance therewith must be made. It is clear that the application for revision must first be made. It is also clear from Section 3(4)(b) that notification must be given before the results of the Revision are notified.
- (g) Late notification, by which we mean notification which does not afford a reasonable opportunity of responding, may amount to non-notification.
- (h) Such notification should be given at or as close to the application for Revision as is feasible.
- (i) The words "if known" do not change the character of the section.
- (j) No concluded view has been expressed as to whether Section 3 should have applied to it that method of interpretation as is specified by the Supreme Court in the *Kinsale Yacht Club* case.”

In so far as this appeal is concerned paragraphs - f, g and i are particularly relevant and an examination of the facts show that an application for revision was forwarded to the Commissioner on the 10<sup>th</sup> October 1999. The letter of notification to the appellant was sent out on the 11<sup>th</sup> October 1999 i.e. twenty days before the result of the revision could be included in the list of determinations made in the quarter ending the 31<sup>st</sup> October 1999. It is clear from the above that the requirements at paragraphs (f) and (h) in the Pettitt judgement have been met and that the only issue to be considered is whether or not the twenty day period afforded the appellant a reasonable opportunity of responding to the letter of notification dated the 11<sup>th</sup> October 1999.

Under Section 4(b) and Section 5(a) the time limit for appeals against determinations made by the Commissioner at revision and at first appeal stage is twenty-eight days after the date of publication of the list of determinations. Despite the fact that the delivery of the post may take a few days the Tribunal considers the notification given under the letter dated the 11<sup>th</sup> October 1999 in this instance meets the criteria set down in the Pettitt case in all respects and consequently that there has been a sufficient compliance with Section 3(4)(a).

13. In relation to the fact that the revising valuers report was dated the 8<sup>th</sup> October 1999 i.e. two days before the list for revision was forwarded to the Commissioner, the Tribunal does not consider this to be a material factor in this appeal. In any event it was agreed by Mr. Halpin that the list dated the 10<sup>th</sup> September 1998 was sufficient for a revision of the subject hereditament to be carried out and as Mr. Rooney pointed out the valuation was subject to approval by the supervising valuer which was only given on the 27<sup>th</sup> October. It is evident from this sequence of events that there was sufficient time between notification and approval of the valuation on the 27<sup>th</sup> October 1999 for the revising valuer to take account of any submission made by the appellant and if necessary adjust the valuation prior to approval by the supervising valuer. However, since quantum is not an issue, any such submission presumably would have been of no effect. In the circumstances therefore the Tribunal finds nothing untoward in the fact that the revising valuer had obviously inspected the property on or before the 8<sup>th</sup> October.

14. Accordingly therefore the Tribunal finds that there has been compliance with Section 3(2)(b) and Section 3(4)(a) and dismisses the Appeal.

**List of cases referred to by the Appellant**

1. Blueflight Logistics v Commissioner of Valuation - VA95/1/030 and VA95/1/031
2. Trustees of Cork and Limerick Saving Bank v Commissioner of Valuation – VA90/3/074
3. Ambrose Cuddy v Commissioner of Valuation – VA97/2/030
4. John Pettitt & Son Limited v Commissioner of Valuation – VA95/5/015
5. Sheen Falls Estate Limited v Commissioner of Valuation – VA92/6/119
6. Topline Fashions Limited v Commissioner of Valuation – VA92/3/017
7. AIB Investment Managers Ltd. – VA94/3/006