

Appeal No. VA00/3/033

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Dublin City Council

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office at Map Reference. 1A Hatch Street Lower, Ward: St. Kevins, County Borough of Dublin

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Patrick Riney - FSCS. MIAVI

Member

Michael McWey - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF APRIL, 2003

By Notice of Appeal dated the 9th day of October 2000, the appellant appealed against the determination of the Commissioner of Valuation in striking out, at first appeal, a valuation of £1,100 fixed on the above described property at Revision.

The grounds of appeal were set out in the Notice of Appeal as follows:

"Dublin Corporation did comply with section 3 (4)(a) of the Valuation Act 1988."

1. The relevant valuation history is that the subject property was first valued at the 1999/4 revision and the rateable valuation assessed at £1,100. On appeal to the Commissioner of Valuation the valuation was struck out on the basis that Dublin Corporation, as it then was, did not comply with Section 3(4) of the Valuation Act 1988. Dublin Corporation appealed this decision on the grounds that:
“Dublin Corporation did comply with Section 3(4)(a) of the Valuation Act 1988”
2. At the commencement of the oral hearing held on 23rd May 2001 Dublin City Council requested that they be permitted to alter their grounds of appeal to include Section 3(4)(b). Following representations by all concerned the Tribunal gave leave to the Council to amend their grounds of appeal as requested, see Judgment dated 14th December 2001.
3. Further to the determination above referred to the appeal proceeded by way of a further oral hearing which took place at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 11th March 2002. At the hearing the appellant was represented by Mr. Paul Coghlan BL instructed by the Law Agent of Dublin City Council and the respondent by Mr. Dan Feehan BL instructed by the Chief State Solicitor’s office. Mr. Eamonn Marray BL instructed by McCann Fitzgerald appeared on behalf of the notice party FISC.
4. Mr. Oliver Brady an official in the Rates Department gave sworn testimony on behalf of the appellant. In evidence Mr. Brady said notices pursuant to Section 3(4)(a) of the Valuation Act 1988 in respect of the subject property were prepared on the 17th June 1998 and posted on the 26th June 1998 to Kopian Ltd. of 14 Wellington Road, Dublin 4 (the owner), and to The Occupier, 71 Adelaide Road, Dublin 2 and a copy of the postal sheet date stamped by An Post was provided to the Tribunal. There is no record that either of these letters was returned to the Council. He further said that following receipt of the revision list from the Commissioner of Valuation in September 1999 notices pursuant to Section 3(4)(b) of the Act of 1988 were prepared and posted on the 22nd of November 1999 to Kopian Ltd. 1A Hatch Street, Dublin 2 and 14 Wellington Road, Dublin 4, to Scottish Amicable at 71

Adelaide Road, Dublin 2 and FISC Ltd. at 1A Hatch Street, Dublin 2. A copy of the postal sheet date stamped by An Post was provided to the Tribunal. Once again there is no record that any of these letters were returned undelivered to the Council. Mr. Brady said that an inspector in the Rates Department visited the building, in which the subject property is located, in mid-February and reported on the 18th February 2000 that FISC Ltd. trading then as Fidelity Investments were and had been in occupation of the subject property i.e. the 4th and 5th floors and also the 3rd floor for approximately six months. It was further recorded that works were still in progress on the ground floor and second floor. A copy of the inspector's report was provided to the Tribunal.

5. Under cross-examination Mr. Brady confirmed that in the original revision list issued by the Commissioner of Valuation on 11th September 1999 the address of the subject property was wrongly stated to be 1A (floors 4 and 5) Adelaide Road. This error Mr. Brady said was corrected before the notices pursuant to Section 3(4)(b) were issued on the 22nd of November 1999. Mr. Brady was unable to throw any light as to how and when the error came to be corrected during the period between the 11th September 1999 and the 22nd November 1999. He did not agree that this indicated that there was some confusion as to the correct postal address of the subject property.
6. Mr. Brady under examination agreed that the primary difference between metered post and registered post was that whilst both systems provided proof of posting registered post provides proof of delivery whilst metered post does not. Under the circumstances he agreed that there was no conclusive evidence to prove that the Section 3(4)(b) notice was received by FISC other than the fact that it was not returned to the Council.
7. Mr. John Doherty a rate collector in the Council in his evidence confirmed that on the 16th February 2000 he had requested an inspection of the building known as 1A Hatch Street Upper. The purpose of this inspection was to fully establish the occupiers of the buildings on a floor-by-floor basis and secondly to establish "the new postal address" of the newly constructed buildings. When asked if there was some confusion regarding the postal address

Mr. Doherty said that there was no confusion at all but what he wanted was mainly confirmation that the information he already had was correct.

8. Mr. Noel Donnelly a warrant officer in the Rates Department also gave sworn testimony. His evidence was to the fact that he carried out the inspection requested by Mr. John Doherty previously referred to. During his inspection he had spoken to a representative of FISC and a representative of the other occupier of the building at that time. Both representatives confirmed that the address of the building was 1A Hatch Street, but neither had mentioned to him that the name of the building was Hardwick House. If they had he would have taken a note of it. When asked if he could say where the FISC reception desk was located Mr. Doherty said he could not recall. Mr. Doherty said that to the best of his knowledge the address of the building i.e. 1A Hatch Street originated with the Valuation Office and would include number 1 Hatch Street. As far as he was concerned the relevant building was at all times known as and referred to as 1A Hatch Street and not 1 Hatch Street or Hardwick House.
9. Mr. Paul Ryan the Vice President of Finance of FISC gave testimony on behalf of the rated occupier. In evidence Mr. Ryan said his company had not received a post revision notice pursuant to Section 3(4)(b) of the 1988 Act. He said his company moved into the subject property during the weekend of the 5th November 1999 and was fully operational thereat almost two weeks after. At that time the ground, first and second floors were being fitted out and were under the control of the contractors. To the best of his knowledge there was no reception desk or security system in operation at ground floor level. Under cross examination Mr. Ryan said that for several weeks after moving into the subject property post was delivered to the company's former offices at Earlsfort Terrace. Mr. Ryan said that it was not the practice of his company to log incoming post. He went on to say that most communications to his office originated from head office or other offices within the corporate structure mainly by email so that the volume of postal mail was relatively small on a day-to-day basis and hence anything of importance would be spotted. As a matter of course any post or correspondence in relation to financial matters would come directly to him and he certainly had no recollection of receiving any correspondence from the Council

in relation to the rateable valuation of the property. If he had received such correspondence he said he would have sought such advice as he considered necessary or appropriate.

- 10.** Mr. Coghlan in submission said that the system of metered post used by the Council was sufficient to ensure compliance with Section 3(4)(a) and Section 3(4)(b) as appropriate. Under this system undelivered post was returned. In this instance the notices were not returned and hence it was reasonable to assume that they had been delivered to the parties to whom they were addressed. The fact that FISC did not have in place a postal log system, made it difficult for them to substantiate their claim that the notice was not delivered. Under the circumstances it must be assumed that the Section 3(4)(b) notices had been delivered and hence that the Council had complied with the statutory obligations imposed on them under Section 3(4)(b).
- 11.** Mr. Feehan on behalf of the respondent and Mr. Marray on behalf of the notice party both submitted that compliance with Section 3 was a mandatory obligation imposed on the Council. The fact that a notice pursuant to Section 3(4)(b) was posted was not conclusive proof that it had in fact been delivered. In the circumstances the Council was not in a position to prove compliance with Section 3(4)(b) and hence the appeal should fail.

Findings

- 1) The grounds of appeal adduced by the appellant are in relation to matters of notification under section 3(4)(a) and 3(4)(b) of the Valuation Act 1988. Since the appeal proceedings were initiated the Valuation Act 2001 has come into effect. Section 57 of this Act provides transitional provisions in relation to matters not completed under the now repealed enactments. Section 57 subsections (7) and (8) of the Act of 2001 provide for appeals to this Tribunal pursuant to Section 3 of the Valuation Act 1988 to be deemed to be valid.
- 2) Over the past several years this Tribunal has considered the question of notification in some detail. In its Determination *John Pettitt & Son Ltd. v Commissioner of Valuation* (VA95/5/015) the statutory processes in operation prior to the introduction of the Valuation Act 1988 were examined in great detail as indeed was the background to and

the intention of Section 3 of the Act of 1988. Having reviewed all of the important decisions on Notification the Tribunal at paragraph 31 of the judgment set out the general principles that could be identified and adduced therefrom and went on to say:

- “ **31.** *From these cases the following general principles can be arrived at:-*
- (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.”*

- 3) Having regard to the above it is clear that compliance with Section 3 is mandatory on behalf of the Rating Authority. In this case there is no dispute that the occupier was known to Dublin City Council following the 1999 revision and that the Council has provided sufficient proof that the required notices pursuant to Section 3(4)(b) were prepared and sent to FISC Ltd. at 1A Hatch Street on the 22nd November 1999.

- 4) It is an established fact that FISC were in occupation of the relevant property from early November most certainly on the 22nd of November 1999 when the notices were sent out by the Dublin Corporation. It is also established that other floors in the building known as 1A Hatch Street were at various stages of fit out, were unoccupied and under the control of the contractor.
- 5) The Tribunal notes that Mr. Ryan said in evidence that for a period of time after moving into the relevant property in early November mail was still being delivered to the company's former offices in Earlsfort Terrace but since the Section 3(4)(b) notice posted on the 22nd November was addressed to 1A Hatch Street there is no reason to suspect that it would have been delivered elsewhere. The Tribunal also notes that the level of post delivered to FISC was a small percentage of the overall correspondence received on a day-to-day basis and accepts Mr. Ryan's evidence that all correspondence in relation to financial matters generally would in the normal course of business arrive on his desk. The Tribunal therefore accepts Mr. Ryan's evidence that he for some reason or another did not personally receive the notice sent out by the Council on the 22nd November 1999. This however is not to say that the said notice was not delivered to the building known as 1A Hatch Street. The fact that Mr. Ryan did not receive the Section 3(4)(b) notice was due to non-delivery or a breakdown in the internal office procedures current within his office at that time. Given the circumstances that the company was in the midst of a move at the relevant date it would not be surprising if their internal communication system was less than perfect for a period.
- 6) Mr. Marray, in his submission, suggested that there may have been some confusion regarding the actual postal address of the relevant property and this may have been the cause of the alleged non-delivery of the Section 3(4)(b) notice. Whatever the merits of this argument no evidence was adduced to show that there was a system failure on behalf of An Post to deliver the letters addressed to FISC at their new address. In the circumstances the Tribunal does not accept that confusion and street numbers was the cause of the alleged lack of delivery.
- 7) In the light of the above the following facts emerge:
 - (i) FISC were in operation of the relevant property from early November.

- (ii) On the 22nd November 1999 when the Council sent out the notices pursuant to Section 3(4)(b), the identity of the occupier of the relevant property was known to the Council as a result of their inquiries.
- (iii) The system of metered post used by the Council provided ample proof of postage but not necessarily proof of delivery. Nonetheless it had been the system in use by the Council for several years and in the opinion of the Council was satisfactory in operation.
- (iv) In the Pettitt case it has been said that “ 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).” It follows therefore that a similar onus remains with the Rating Authority when a similar issue is raised under 3(4)(b). It is not disputed that the relevant notice was prepared, addressed and posted to FISC pursuant to Section 3(4)(b). The question to be answered is whether or not this represents full compliance with the statutory provisions or should the Council have taken further action in order to prove delivery by way of using the registered postal system as against the metered postal system used by them for several years past.

Determination

Having regard to the above the Tribunal holds in favour of the Council. The Tribunal in the circumstances of this appeal is satisfied that the Council took all reasonable measures necessary to identify the occupier before sending out the relevant notices in accordance with Section 3(4)(b). The Tribunal also finds that the method of notification used by the Council was generally satisfactory in operation and hence adequate for showing compliance with 3(4)(a) and 3(4)(b) as appropriate. In the circumstances therefore the Tribunal finds that the measures taken by the Council represent a sufficient compliance with the statutory obligations imposed on them under Section 3(4)(b). Nonetheless given the importance of Section 3 notices to all concerned, it would have been better if the Council had availed of the registered postal system or some other means of delivery which provided not only proof of postage but of delivery.