

Appeal No. VA01/2/007

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

**Xtravision Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop at Map Reference Unit 1 Knocknacarra Shopping Centre, Shangort, Barna, County Borough of Galway

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Maurice Ahern - Valuer**

**Member**

**Michael McWey - Valuer**

**Member**

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

By Notice of Appeal dated the 20th day of July 2001, the appellant appealed against the determination of the Commissioner of Valuation in fixing a Rateable Valuation of £130 (€165.07) on the property concerned. The grounds of appeal were set out in the Notice of Appeal as follows:

"1. The Valuation is excessive, inequitable and bad in law. 2. My clients were not notified of the outcome of the 2000/4 revision or of the fact that Galway Corporation had appealed this valuation, as required under the Valuation Acts."

The grounds of appeal relied upon by the Appellant are in relation to matters of notification pursuant to Section 3(4) (a) and or 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 Section 57 of this Act contains transitional provisions in relation to matters not completed under the now repealed enactments, in particular section 57 subsections (7) and (8) of the Act provide for appeals pursuant to Section 3 of the Valuation Act 1988 to be deemed to be valid.

1. This appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 23<sup>rd</sup> of March 2002.

The relevant valuation history is that the property was listed for revision at the 2000/4 revision and subsequently appeared in the revised Valuation List incorrectly at the rateable valuation of £13 (the correct assessment being RV£130 (€165.07)). This assessment was appealed by Galway City Council and as a result the valuation was increased to £130. The appellant through its agent Bardon & Company lodged an appeal against this assessment on the grounds previously referred to. Prior to the oral hearing the parties agreed that the correct rateable valuation of the subject property in accordance with the Valuation Acts is £130 (€165) so that the only issue for this Tribunal to decide is whether or not the appellant was notified of the revision and first appeal pursuant to Section 3(4)(a) and Section 3(4)(b) of the Valuation Act 1988 and / or of the fact that Galway Corporation had appealed the Valuation.

2. At the oral hearing the appellant was represented by Mr. Owen Hickey BL instructed by A & L Goodbody Solicitors. Expert valuation evidence was given by Mr. Joseph Bardon FSCS FRICS of Bardon & Company. Evidence was also given by Mr. Eric Ruddle ASCS ARICS, Estates Surveyor with Xtravision Plc. The respondent was represented by Ms. Sean Quinn BL instructed by the Chief State Solicitor. Expert valuation evidence was given by Mr. Michael Keogh FRICS FIAVI a staff valuer in the Valuation Office. Evidence was also given by Ms. Anne Marie Brett, staff officer in the Rates Department of Galway City Council and by Ms. Siobhain Scanlan a member of staff in the same department as Ms. Brett.

3. Arising from the oral hearing the following are the material facts either agreed or so found which in the opinion of the Tribunal are relevant to the issues, the subject matter of this appeal.
- a. The relevant property is a unit within the Knocknacara Shopping Centre which was developed in 1999. The Centre was valued during the course of the 2000/4 revision and the subject unit entered into the Valuation List with a Rateable Valuation of £13 instead of £130, the latter which the parties are now agreed is the proper rateable valuation of the property.
  - b. During an examination of the revised Valuation List Galway City Council spotted the error and contacted the Valuation Office to establish how the situation could be rectified.
  - c. On foot of advice from the Valuation Office the Council by letter dated the 4<sup>th</sup> December 2000, addressed to the Secretary of the Valuation Office and accompanied by a cheque in the sum of £50 lodged an appeal against the assessment of £13. This letter was signed by Mr. P.J. McGovern, Finance Officer of Galway Corporation.
  - d. On the 14<sup>th</sup> of May 2001 Mr. Keogh contacted Mr. Bardon to say that he had been appointed by the Commissioner of Valuation as the appeal valuer to investigate the appeal lodged by Galway City Council as above referred to. Mr. Keogh contacted Mr. Bardon because from previous experience he was aware that Mr. Bardon usually advised Xtravision in relation to rating matters. Mr. Bardon told Mr. Keogh that he knew nothing of the appeal nor had he been contacted by Xtravision either in relation to the 2000/4 revision or the appeal lodged by the Council.
  - e. Following his conversation with Mr. Keogh, Mr. Bardon contacted Mr. Eric Ruddle the Estate Surveyor of Xtravision who said that he also was unaware of the 2000/4 revision or the appeal. Mr. Ruddle said he would investigate the situation further and contact Mr. Bardon in due course.
  - f. On the 22<sup>nd</sup> of June 2001 Mr. Bardon again spoke to Mr. Ruddle who said he was unable to find any correspondence either at the head office of Xtravision or at the premises in Knocknacara in relation to the 2000/4 revision or the appeal lodged by the Council in December 2000.

**g.** On the 22<sup>nd</sup> June 2001 following his conversation with Mr. Ruddle, Mr. Bardon wrote to Galway City Council asking for copies of the following correspondence:

- “ a. Notice of your intention to seek revision of valuation as required under section 3(4)(a) of the Valuation Act 1988.
- b. Notice of the outcome of the revision as required under section 3(4)(b) of the Act.
- c. A copy of the Notice of Appeal lodged by Galway City Council to the Commissioner of Valuation.”

On the 2<sup>nd</sup> of July Mr. Bardon rang the Council and was told that his request was being attended to and that the information required by him would be forwarded within a few days.

- h.** On the 9<sup>th</sup> July 2001 Mr. Keogh again contacted Mr. Bardon in order to discuss the appeal. Mr. Bardon told him that in the absence of the correspondence sought from Galway City Council he was reluctant to engage in any discussions regarding the appeal at this time.
- i.** On the 10<sup>th</sup> July 2001 the Commissioner of Valuation issued the appeal list as a result of which the Rateable Valuation of the relevant property was increased from £13 to £130.
- j.** On the 18<sup>th</sup> July Mr. Bardon received by fax dated the 17<sup>th</sup> July photocopies of the following correspondence:
- (i) Photocopy of Letter dated 9<sup>th</sup> May 2000 addressed to Xtravision at Knocknacara advising the company of a request for revision.
- (ii) Photocopy of Letter of Appeal dated 4<sup>th</sup> December 2000 addressed to the secretary of the Valuation Office.
- (iii) Photocopy of letter dated the 12<sup>th</sup> July 2001 addressed to Xtravision Plc at Knocknacara notifying the company of the outcome of the appeal.
- This correspondence was received by post on the following day.
- k.** On the 20<sup>th</sup> August 2001 Mr. Bardon on behalf of Xtravision lodged an appeal to this Tribunal on the grounds as set out above and in due course the appeal was listed for hearing on the 23<sup>rd</sup> November 2001.

- l.** On the 22<sup>nd</sup> August 2001 Mr. Bardon received by fax from Galway City Council a copy of a letter dated the 17<sup>th</sup> November 2001 addressed to Xtravision at Knocknacara advising the company of the outcome of the 2000/4 revision.
- m.** On the 27<sup>th</sup> September 2001 Mr. Bardon wrote to Mr. McGovern of Galway City Council asking for confirmation that a copy of the letter of appeal dated 4<sup>th</sup> December 2000 addressed to the secretary of the Valuation Office had been sent to Xtravision. This letter was followed by a reminder dated the 23<sup>rd</sup> October 2001 in which Mr. Bardon referred to his earlier correspondence in September. He also advised the Council of the hearing of the appeal to the Valuation Tribunal set down for hearing on the 23<sup>rd</sup> November 2001.
- n.** On the 24<sup>th</sup> October 2001 Mr. McGovern wrote to Mr. Bardon to say that the Council had no record that the letter sent to the Valuation Office on the 4<sup>th</sup> December 2000 had been copied to Xtravision. However Mr. McGovern went on to say that he had spoken about the matter by telephone to staff members at Xtravision in Knocknacara who referred him to Mr. Ruddle in the Head Office Dublin.
- o.** On the 31<sup>st</sup> October 2001 Mr. Bardon sent a copy of the letter from Mr. McGovern dated the 24<sup>th</sup> October to Mr. Keogh. Following a discussion with Mr. Keogh on the 5<sup>th</sup> November 2001 it was agreed that Mr. Keogh would recommend to the Commissioner of Valuation that the original valuation of £13 be restored.
- p.** On the 6<sup>th</sup> November 2001 Mr. Bardon wrote to this Tribunal advising it of the outcome of his discussions with Mr. Keogh and a copy of this letter was sent to Mr. Keogh.
- q.** On the 7<sup>th</sup> November 2001 Mr. Bardon wrote to Mr. Keogh confirming Xtravision's agreement that the original valuation of £13 be restored. He also confirmed that in the event of the relevant property being listed for the 2001/4 revision Xtravision would not appeal against a rateable assessment of £130.
- r.** On the 12<sup>th</sup> November 2001 Mr. Keogh telephoned Mr. Bardon to say that the Commissioner of Valuation was not prepared to accept his recommendation that the valuation of £13 be restored. This decision he said was taken in the light of additional correspondence in the matter that had just been received from Galway City Council.

- s. On the 14<sup>th</sup> November 2001 Mr. Bardon received by fax a letter from Galway City Council dated the 13<sup>th</sup> November saying that a copy of a letter dated the 11<sup>th</sup> of December 2000 addressed to Xtravision at Knocknacara had now been retrieved. This letter under Mr. McGovern's name advised Xtravision of the Council's appeal against the assessment of £13 and went on to say that the writer had spoken to Mr. Eric Ruddle about the matter. Enclosed with this letter was a copy of the letter of appeal dated the 4<sup>th</sup> December 2000 addressed to the secretary of the Valuation Office also under his name. It should be said that the photocopies of the letters were unsigned file copies and not actual copies of the letters on Council headed notepaper addressed to Xtravision at Knocknacarra.
- t. On the 14<sup>th</sup> November 2001 Mr. Bardon wrote to this Tribunal asking that the hearing set down for the 23<sup>rd</sup> of November 2001 be postponed.
- u. An examination of the photocopy of the letter dated the 4<sup>th</sup> December 2000 addressed to the Secretary of the Valuation Office provided to Mr. Bardon on the 17<sup>th</sup> July 2001 is substantially different to the photocopy given to him on the 14<sup>th</sup> November 2001, a copy of which it was said had been sent to Xtravision at the time.
- v. On the 15<sup>th</sup> November 2001 Mr. Bardon wrote to Galway City Council asking if they could let him have proof of postage in respect of the letter dated the 11<sup>th</sup> December 2000 addressed to Xtravision at Knocknacara. The Council has not yet responded to this request although it was stated in evidence that such letters were usually sent by registered post.

### **Findings**

- 1) The question of notification has been considered by this Tribunal on a number of occasions. See in particular the appeal of John Petitt & Sons Ltd. v Commissioner of Valuation (VA95/5/015) where the purpose and intention of section 3(4)(a) was considered together with an analysis of a number of previous cases on the notification issue. At paragraph 31 of that judgment the Tribunal set out a number of general principles that could be both identified and adduced therefrom. It said the following:

**“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, where 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."*

2) Applying these principles to the facts of this case a number of questions arise. Firstly did Galway City Council comply with the requirements of section 3(4)(a) of the Valuation Act 1988? Secondly, did the Council comply with the requirements of section 3(4)(b) of the 1988 Act in relation to the outcome of the 2000/4 revision and the outcome of the appeal lodged by the Council on the 4<sup>th</sup> December 2000? Thirdly, were the Corporation required to notify the appellant that it had lodged the appeal dated the 4<sup>th</sup> December 2000 and if so did it do so. If the answer to the first question is in the negative then the valuation must be struck out. If on the other hand the Tribunal finds that the Corporation complied with Section 3(4)(a) but not with Section 3(4)(b) in relation to the outcome of the revision then the Valuation must also be struck out. If the Tribunal finds that the Corporation did comply with 3(4)(b) in

relation to the outcome of the 2000/4 revision but did not comply with section 3(4)(b) in relation to the outcome of the appeal lodged on the 4<sup>th</sup> December 2000 then in that case the original valuation of £13 must be restored. In relation to the third question the position is less clear. Under section 3 of the 1988 Act there is no explicit provision for a Rating Authority to appeal against the determination by the Commissioner of Valuation arising from a revision carried out under section 3(1) of the 1988 Act. The general right to appeal under section 3(4)(b) is derived from sections 19 and 31 of the Valuation Act 1852. Under section 1 of the Valuation of Rateable Property (Ireland) Act 1864 a Rating Authority however has the same rights to appeal as those contained in sections 19 and 31 of the Act of 1852. Section 2 of the 1864 Act however requires the authority to notify the occupier of the appeal. Hence if the Tribunal finds that Galway City Council failed to notify the appellant of the appeal lodged by it on the 4<sup>th</sup> December 2000 then the original valuation of £13 must be restored.

3)                                Having regard to the foregoing the first question to be determined by this Tribunal is whether Galway Council complied with Section 3(4)(a). The Tribunal is satisfied that the appellant took up occupation of the relevant property on or about April 2000 and hence was known to the Council at that time. The Council has provided a photocopy of the letter dated the 9<sup>th</sup> May 2000 on Council headed notepaper addressed to the appellant at Knocknacara. The Tribunal accepts that this letter is in a form that would conform with the requirements of section 3(4)(a).

4)                                The appellant contends that it did not receive the letter above referred to nor indeed any letters sent to it by the Council in relation to the outcome of the revision, the appeal lodged by the Council and the result of the appeal. The Council has provided photocopies of all these letters but it must be said that the letters in relation to the appeal are file copies and not photocopies of the actual letters sent. The Council admitted that the letter dated the 11<sup>th</sup> December 2000 addressed to the appellant at Knocknacara had gone missing from its computer for a period of time and was only retrieved in mid-November 2001 after the appellant and the Commissioner of Valuation had provisionally agreed that the original valuation of £13 be restored. The Council did not adduce conclusive evidence to prove that any of the four letters referred to were in fact posted nor did it produce evidence to show that it had in place procedures whereby proof of postage could be produced if required. Mr. Ruddle



in his evidence said that there was no system of recording incoming post either at central office level or local level.

5) The central tenet of the appellant's case is that Galway City Council failed to comply with sections 3(4)(a) and or 3(4)(b) respectively. Mr. Ruddle in evidence said that he had carried out an investigation at Knocknacara and head office and was unable to find trace of any of the relevant correspondence from the City Council in relation to the 2000/4 revision and the subsequent appeal. If in fact the Council did send out all four letters of notification, to Xtravision at Knocknacara, as alleged, none of which could be traced by Mr. Ruddle, this indicates either a weakness within Xtravision's internal system of administration or a chronic deficiency in the operation of the postal system in the Knocknacara area. The balance of probability would indicate that the difficulty may have lain within Xtravision's internal administration procedures.

6) Having regard to the foregoing the Tribunal finds that Galway City Council has shown sufficient evidence of compliance with Section 3(4)(a) and Section 3(4)(b) in relation to the 2000/4 revision process by virtue of the fact that it has produced photocopies of the **actual letters** sent to Xtravision at Knocknacara dated 9 May 2000 and 11<sup>th</sup> December 2001 respectively. However the Tribunal finds that the quality of documentation produced in relation to the appeal lodged in December 2001 is not sufficient to discharge the onus of proof necessary to show compliance with Section 3(4)(b) or Section 2 of the Act of 1864 as the case may be. Under the circumstances therefore the Tribunal directs that the original valuation of £13 be restored.