

Status of Judgment: Distributed

Appeal No. VA01/3/083

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

Icon Clinical Research

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Map Reference:1K South County Business Pk., Carmanhall & Leopardstown, Glencullen, Rathmichael County Dublin

B E F O R E

Tim Cotter - Valuer

Deputy Chairman

Michael Coghlan - Solicitor

Member

John Kerr - MIAVI

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF MARCH, 2002**

By Notice of Appeal dated the 17 October 2001, the appellant appealed against the determination of the Commissioner of Valuation in fixing the rateable valuation of €2107.77 (£1660) on the above described hereditament. The grounds of appeal as set out in the Notice of Appeal are as follows:

"that the rateable valuation is excessive, inequitable and bad in law."

The appeal proceeded by way of an oral hearing, which took place on the 11th and 19th February 2002 in the Tribunal Offices Ormond House, Ormond Quay, Dublin 7. The Appellant was represented by Mr. Eamonn Halpin B.Sc. (Surveying) ASCS ARICS MIAVI of Eamonn Halpin and Co.. The respondent was represented by Mr Christopher Hicks, a District Valuer in the Valuation Office with 27 years experience. Having taken the oath each valuer adopted as his evidence in chief his written submission, which had previously been exchanged by the valuers and submitted to the Tribunal.

The Property

The Property comprises a modern office block constructed in two phases, the first completed in 1995 and the second in 1999. It is situated in the South County Business Park.

Quantum in relation to the premises was agreed.

Appellant's case

In his written submission Mr Halpin on behalf of the appellant set out the remedies sought in the subject appeal as follows:

“ Appellant seeks to have part of the revision set aside and have the RV reduced to €1231.65 (£970) being the relative part of the overall RV that has been agreed to lie within the boundaries of the occupier's original hereditament which was the subject of the revision request.

In the Alternative

The appellants seek to have the revision set aside in its entirety as they believe it to be invalid due to the inordinate delay in processing the request by the Commissioner which they believe to be outside the terms of S3(3) of the 1988 Act which specifies that revision requests be dealt with within 6 months or as soon as practicable thereafter”.

Mr Halpin gave his evidence in accordance with his written submission.

He set out the Valuation History and the relevant dates in relation to the subject appeal at page 3 of the said submission. He gave details of the title of the property which he said was held under two titles:

Title No. 1 (Original site) Approx 0.99 acres

Lease dated 8 September 1995 made between Forfas on the one part and Icon Plc of the other part for a term of 999 years from 1/1/1995. (A map outlining the relevant portion in red was included in the written submission).

Title No. 2 (Additional site approx 2.05 acres)

Lease dated 17th August 1998 made between the Industrial Development Agency (Ireland) of the one part and Icon Clinical Research of the other part for a term of 999 years from 1/1/1998. (Outlined in green on the map in the written submission).

Mr Halpin set out his submissions in relation to the issue of the validity of the revision at Section 3 of his written submission.

The relevant extracts from the written submission are attached to this judgment at Appendix 1.

Respondent's case

Mr Hicks on behalf of the Commissioner of Valuation gave his evidence in accordance with his written submission. He set out the valuation history of the property at page 2 of the said submission. He set out the response of the Valuation Office to the issues raised by the appellant at First Appeal.

The relevant extracts from the written submission are attached to this judgment as Appendix 2.

DETERMINATION

The Tribunal has considered the evidence presented by the Appellant and the Respondent and has noted the arguments adduced in evidence by Mr. Eamonn Halpin for the

Appellant and Mr. Christopher Hicks on behalf of the Respondent. Mr. Halpin has presented an argument, which was recently made before the Tribunal in the case of Caulfield Industrial Limited -v- Commissioner of Valuation - VA00/3/050. Mr. Halpin has also relied upon the case of Switzer -v- Commissioner of Valuation (1902) 2IRP215 and the more recent Valuation Tribunal case of John Petitt & Son -v- Commissioner of Valuation – VA95/5/015.

Mr. Halpin has in this case raised two issues within his appeal namely:

- a) that notice pursuant to Section 3 (4)(a) of the Valuation Act is defective and
- b) that the delay between notification and the carrying out of the revision invalidates the process.

Mr. Christopher Hicks has in his response contradicted these propositions. In defence to the arguments raised, Mr. Hicks has noted that it is common case that the absence of a specific description of the hereditament identified for valuation was not a crucial factor. Mr. Hicks has drawn a distinction between the decision in the Switzer case and these present proceedings upon the basis that the valuation of property in the Switzer case covered a number of pre-existing properties with definable boundaries. He has contended that it is no longer the practice of the Valuation Office to concern itself with boundaries where open land is involved as the valuation of land *per se* is no longer of relevance.

Mr. Hicks has gone on to argue that the subject hereditament could not have been described in any other manner than as set out within the notification for revision, which issued in or about November 1998. He has argued that there were no maps or drawings delineating the boundaries. There were no unit numbers or distinctive postal addresses or indeed any other identifying paperwork such as would distinguish one building from another or one development site from the next within the South County Industrial Park.

Finally, Mr. Hicks has argued that the delay when advancing the revision process while regrettable is not fatal in that Section 3 (4)(a) does not specify a time span for the carrying out of a revision.

When considering the arguments adduced the Tribunal makes the following findings:

1) In this instance the description of the property intended for revision was always going to suffer from a vagueness associated with newly developed property. In the present case the hereditament under valuation had been recently erected upon industrial sites let by the IDA to the Appellant pursuant to building leases. Those leases were duly registered in the Land Registry against the parent Folio. There were no marked off industrial units and no specific postal numbers set out within the Industrial Estate. Nor were there any documents specifically identifying the premises erected which could have been of any assistance either to the Appellant or the Respondent. The absence of leases until recently is thus of no relevance.

2) The premises were duly inspected at a time when the first part of the building was complete and when the second part of the building (or the extension) was either at an advanced stage of construction or complete. As no issue has been raised as to fitness for occupation, the Tribunal presumes that the well-tried principle of *rebus sic stantibus* applies.

3) As no better description of the subject building could have been appended to the revision notice, the Tribunal is of the view that there has been neither by omission nor commission, a miss-description of the subject premises.

4) It is the view of the Tribunal that such magnitude of delay as occurred in this case is not just regrettable but is undesirable and contrary to the spirit if not the letter of the legislation. In this respect the Tribunal is not impressed with the argument adduced by Mr. Hicks that such delay is acceptable, simply upon the basis that the Appellant suffered no prejudice or financial loss as a result. If such argument were advanced to its logical

conclusion a ten-year hiatus would require a similar immunity. Such delays were clearly not intended when the legislation was drafted.

5) Notwithstanding the foregoing in this present case, the Tribunal does not consider the delay unreasonable to the point of being a ground for the overturning of the Commissioner's valuation of the subject hereditament.

6) Finally, the Tribunal reaffirms the principles outlined in its Determination in the case of Caulfield -v- Commissioner of Valuation, referred to above and which are pertinent to this present case.

The Tribunal thus affirms the decision of the Commissioner of valuation in fixing a rateable valuation of the subject property of €2,107.77.