

Appeal No. VA08/4/015

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

Oaklee Housing Trust Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2182632, Office(s) at Lot No. 36-39 (flr 0), James's Street, Ushers Quay
C, Ushers Quay, County Borough of Dublin

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Brian Larkin - Barrister

Member

Frank Walsh - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF MAY, 2009

By Notice of Appeal dated the 19th day of December, 2008 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €130.00 on the above described relevant property.

The grounds of Appeal are set out in the Notice of Appeal and a letter attached to the Notice of Appeal, a copy of which is contained in the Appendix to this judgment.

1. The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin, 7 on the 18th day of March, 2009. At the hearing the appellant was represented by Ms. Joan Campbell, BL, instructed by Ms. Diane Jamieson, Solicitor with A & L Goodbody. Mr. Colm MacEochaidh, BL, instructed by the Chief State Solicitor, and Ms. Orla Lambe, a Valuer in the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

The Property Concerned

2. The property concerned in this appeal is a suite of offices occupied by the appellant being part of the ground floor of a new block of residential apartments at 36 - 39 James Street, Dublin, 8.

Rating History

3. The property concerned was first valued in February, 2006 following a revision carried out pursuant to section 28 of the Valuation Act, 2001 and its rateable valuation was determined at €130. The appellant, for whatever reason, did not avail of the opportunity to make representations under section 29 or to lodge an appeal against the determination under section 30 of the Valuation Act, 2001.
4. In February, 2008 an application for revision of valuation of the property concerned was made by the appellant in accordance with section 27 of the Act. On 23rd April, 2008 the Revision Officer appointed by the Commissioner of Valuation in accordance with section 28 issued a document headed “Notice of Decision” to the effect that “no material change of circumstances” had occurred in relation to the said property. Consequently the entry in the relevant Valuation List remained unchanged.
5. On the 30th May, 2008 the appellant lodged an appeal against the decision of the Revision Officer under section 30 of the Valuation Act and on 28th November, 2008 the appellant was advised that the said appeal had been dismissed on the grounds that “no material change of circumstances” had occurred to the property since it was first valued at the 2006 revision. The appellant being dissatisfied with the decision of the Commissioner of Valuation submitted an

appeal to the Valuation Tribunal under section 34 of the Act and at paragraph 6(e) of the Notice of Appeal dated 19th December, 2008 stated that the grounds of appeal were that *“Oaklee Housing Trust is a registered charity”*.

The Appellant’s Submission

6. Ms. Campbell in her submission said that the appellant accepted that there had been no material change of circumstances in relation to the property as valued at the 2006 revision. The appeal, Ms. Campbell said, was against the decision of the Commissioner of Valuation in the first instance to value the property concerned, which she contended was at all times occupied by the appellant and hence a relevant property not rateable as provided for in paragraph 16(a) of Schedule 4 of the Valuation Act, 2001. Accordingly, therefore, the appellant was seeking a determination from the Tribunal stating that the Commissioner of Valuation had no authority or capacity to value the property at the 2006 revision, by virtue of the fact that on the relevant valuation date the property was, and still is, occupied by the appellant which is “a charitable organisation” as defined in section 3 of the Valuation Act.

The Respondent’s Submission

7. Mr. MacEochaidh on behalf of the respondent submitted that the Tribunal did not have the authority to make the determination sought by the appellant. In support of his submission Mr. MacEochaidh drew the Tribunal’s attention to the statement of Mr. Justice Brian McMahon at page 14 of the judgment in the case **Commissioner of Valuation v Birchfox Taverns Limited (2006890SS) [2006 890 SS]**:

“Since the 2001 Act, was passed, however, apart from the mechanisms provided for in ss. 27 and 28 there are no other circumstances where a revision can be ordered by the Tribunal. If a revision is not allowed under ss. 27 and 28, the Tribunal has no residual power to order one”.

Mr. MacEochaidh also referred this Tribunal to the comments made by the Tribunal in previous cases, firstly **VA96/6/012 - Telecom Eireann** and in particular to the comment made at paragraph 8 (b) thereof:

“Under the Valuation Act 1988, and in particular Section 2(2) this Tribunal, being statutory in origin and having only the powers, duties and responsibilities thereby conferred on it, has jurisdiction to hear and determine appeals under Section 3. Accordingly it could have no wider powers and thereof no competence in relation to this request. As to whether an application could be made to Court either in the form

of a declaratory order or by way of judicial review seeking an order of mandamus is a matter upon which we make no observation and express no view.”

Secondly, in the case **VA08/5/017 and 018 - Coolmine Leisure Ltd. and Dr. Linda Hamilton & Dr. Liam Lynch** Mr. MacEochaidh drew the Tribunal’s attention to a comment at page 5 of the judgment therein:

“The Tribunal is also of the view that it does not have the power to “direct” the Respondent to behave in a particular way e.g. to direct him to publish the Valuation List in accordance with the provisions of Section 23 as suggested.”

Determination

The Tribunal is indebted to both Counsel for the range and depth of the written and oral submissions made at the hearing. Having considered the submissions and having regard to the authorities referred to us the Tribunal finds as follows:

1. This Tribunal can deal only with those matters which properly fall within our jurisdiction, which in this case is an appeal under section 34 against the decision of the Commissioner of Valuation arising out of the 2008 revision process. In arriving at our decision in this regard we have, of course, had regard to the authorities as referred to us by Mr. MacEochaidh and in addition to the comments in **VA05/3/054 - Pfizer Ireland** where the Tribunal observed *“the previous decisions of the Tribunal do not indicate to us that the Tribunal has a declaratory jurisdiction to declare a previous process and resulting rate a nullity. Indeed we are impressed by the submission... that the appropriate entity in which to seek declaratory relief is the High Court rather than the Valuation Tribunal”* and *“the existence or otherwise of a declaratory jurisdiction in the Valuation Tribunal is a matter of considerable uncertainty.”*
2. Accordingly we are of the view that we have neither the authority nor jurisdiction to give the direction sought by the appellant as such a course of action is outside our remit.
3. At this stage we can express no opinion one way or another as to whether or not the appellant is a “charitable organisation” within the meaning of section 3 of the Valuation Act, 2001.

And the Tribunal so determines.