

Appeal No. VA12/1/020

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

**Owen Swaine**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 1143471, Office(s) at Lot No. 23ab, Father Griffin Road, Townparks  
Rahoon, Claddagh, South, County Borough of Galway.

**B E F O R E**

**Niall O'Hanlon - BL**

**Deputy Chairperson**

**Fiona Gallagher - BL**

**Member**

**Thomas Collins - PC, FIPAV, NAEA, MCEI, CFO**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 3<sup>rd</sup> DAY OF SEPTEMBER, 2012**

By Notice of Appeal received on the 6th day of March, 2012 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €80 on the above described property.

The grounds of appeal as set out in the notice of appeal are:

*"The valuation includes property which is designated as residential as per planning permission."*

*"Residential property is incorrectly included in the valuation."*

*"The residential portion of the property should not have been included in the valuation."*

*"The residential portion of the property should have been excluded."*

*"Residential property."*

The appeal proceeded by way of an oral hearing held at the offices of the Valuation Tribunal, 3<sup>rd</sup> Floor, Holbrook House, Holles Street, Dublin 2, on the 22<sup>nd</sup> day of May 2012 and on the 8<sup>th</sup> day of August 2012. Mr. Owen Swaine gave evidence and appeared on his own behalf. The respondent was represented by Ms. Gráinne O'Neill BL, instructed by the Chief State Solicitor and Mr. Don Donovan, BSc (Property Management & Valuation Surveying), Dip FM, MIAVI, a Valuer in the Valuation Office, gave evidence on behalf of the respondent.

### **Location**

The subject property is located at 14 Fr. Griffin Road, Galway, approximately 400 metres west of Wolfe Tone Bridge. It is situated on the main route west from Galway City towards Salthill.

### **The Property**

The subject property consists of a two-storey former domestic property. Internally it is carpeted, with tiling in the hall, kitchen and reception areas and recessed spot lighting and network cabling throughout.

The accommodation is as follows:

Ground Floor	72.651 sq. metres	
First Floor	51.362 sq. metres	
Attic	43.00 sq. metres	(Estimate only, as could not be inspected)

### **Tenure**

The subject property is held freehold.

### **Rating History**

The subject property was listed for revision by Galway City Council and Mr. Donovan was appointed as Revision Officer on 17<sup>th</sup> August 2010. There were difficulties inspecting the property and a Draft Certificate issued on 5<sup>th</sup> January 2011 fixing a Rateable Valuation (RV) of €80 on the subject property, without a formal inspection having taken place. Representations were received on 31<sup>st</sup> January 2011, but the valuation remained unchanged and a Final Certificate issued on 9<sup>th</sup> February 2011. The appellant appealed against this valuation to the Commissioner of Valuation, which appeal was rejected and the valuation

remained unchanged. The appellant appealed this decision to the Tribunal by Notice of Appeal dated 5<sup>th</sup> March 2012.

### **The Issue**

The use of the subject property and its rateability. The appellant's case was that part of the property was in domestic use and accordingly should not be rated.

### **The Appellant's Evidence**

Mr. Owen Swaine, having taken the oath, adopted his written précis as his evidence-in-chief. Mr. Swaine stated that the basis of his appeal was twofold; firstly that the planning permission in respect of the subject property only allowed part thereof to be used for commercial purposes and, secondly, he argued that the respondent had not produced any evidence that the balance of the property, which could only be used for domestic purposes, was used or occupied for commercial purposes.

Mr. Swaine referred to the planning permission on the subject property, granted in 2007, which gave permission for a change of use from a ground floor retail shop and storage facilities to a ground floor office area. He stated that the room to the rear of the building (Room 5) was incomplete, with no concrete blocks or plaster externally. This area comprises an office shared by himself and his partner in the firm, a shower room and a toilet. There is a small kitchen (Room 4) between the office at the rear of the building and the reception area at the front.

Mr. Swaine indicated that the business has three staff, in addition to himself and his partner; two fulltime staff, a secretary and an accountant, and one part-time secretary. He stated that the two secretaries share the reception area on the ground floor (Room 1) and the accountant uses a room on the first floor (Room 8). Other than this, Mr. Swaine stated that the rest of the first floor accommodation was unoccupied. He indicated that there is no permission to use the accommodation on the right-hand side of the ground floor for commercial use. Notwithstanding same, however, he stated that one of these rooms is used as a meeting room for clients (Room 3). He referred to the other room (Room 2) as a "Dining Room" and stated that it contained a dining table and chairs.

**Cross-Examination**

Under cross-examination, it was put to Mr. Swaine that the layout and wiring of the dining room appeared to be more akin to a meeting room for business use. He disagreed and replied that when the property was renovated he was advised that it would be futile to spend a substantial sum on renovations without installing the best cabling and wiring. He further stated that the business is a small solicitor's practice and it does not have enough clients to warrant a second meeting room. Mr. Swaine did admit that this room is not actually used as a dining room however.

It was also put to Mr. Swaine that one of the first floor rooms (Room 6) was laid out as an office. He accepted that it may look like an office but denied that it was in use, save for by his children for study purposes. He stated that he had previously occupied a property in the city centre, which he had vacated and had brought the furniture from this office with him, which furniture was stored in Rooms 6 and 7 on the first floor. Mr. Swaine admitted that there was a high level of connectivity throughout the building, but maintained that he had "gone the extra mile" and had enhanced the building when renovating it.

Mr. Swaine admitted that the attic was used to store files from his former practice. He claimed however that this area was locked for approximately 12 months and that it was not used, as the stairs used to gain access thereto are very steep.

**Respondent's Evidence**

Mr. Don Donovan, having taken the oath, adopted his written précis and valuation as his evidence-in-chief. Mr. Donovan stated that he had attended the subject property approximately four times in 2010 and 2011, but was only able to gain access to the reception area. On these occasions he stated that he had observed people moving around the property to the rear and also going upstairs, carrying files. Mr. Donovan indicated that he inspected the entire property in 2012.

On his inspection, Mr. Donovan stated that he had formed the opinion that Room 2 was in commercial use, based on the fit-out, cabling and lighting therein. He stated in his précis that the chairs around the table were leather, office-type chairs. In Mr. Donovan's view the kitchen on the ground floor was typical of a kitchenette attached to a commercial premises. He stated that it did not contain any of the appliances one would expect to find in a domestic

kitchen, such as an oven or dishwasher. Mr. Donovan stated that there was no separate access to the property such as to allow someone to be reasonably domiciled there. Based on his observations during his inspection, he said that there was no evidence of anyone actually living there. He admitted that there were a couple of shirts and suits hanging in Room 7, but contended that these would be what one would expect in an office environment. Furthermore, Mr. Donovan indicated that all the furniture on the premises was what one would expect of a business premises.

Mr. Donovan was of the view that the attic was an integral part of the office. He stated that it was used to store office files and in any office the store room is valued. Mr. Donovan stated that he was unable to gain access to the attic on the date of his inspection and thus he had estimated its area based on his experience as a surveyor and from the plans of the building. He stated that he had deducted 2 sq. metres. from the total area for the stairs.

Mr. Donovan contended for a rateable valuation of €75, calculated as follows:

Ground Floor	72.651 sq. metres @ €82 per sq. metre	=	€5,957.382
First Floor	51.362 sq. metres @ €68.34 per sq. metre	=	€3,510.079
Attic	43 sq. metres @ €56.95 per sq. metre	=	<u>€2,448.850</u>
Total NAV			€11,916.31
RV @ 0.63%	= € 75.07276		
Say, € 75			

The RV of the subject property on the Valuation List is €80. However, Mr. Donovan amended his opinion of RV to €75 following his inspection of the property in 2012.

### **Cross-Examination**

Under cross-examination, Mr. Donovan was unable to say for certain if he had seen anyone entering Room 2 while he was on the property. However, he stated that he did observe people moving around the office. It was put to Mr. Donovan that the accountant uses a room upstairs and therefore this could explain why he saw someone going up and down the stairs. Mr. Donovan, however, responded that he observed more than one person using the stairs and that it could have been four or five people.

Mr. Donovan affirmed that a property has to be domestic in nature in order to be excluded for rating purposes. He stated that an office which is vacant does not make the property residential. He denied the relevance of planning permission in valuing a property, as he stated the respondent values what is actually on the ground, "*rebus sic stantibus*", irrespective of whether same is in contravention of or without planning permission.

Mr. Donovan accepted that the wiring in a property does not make it an office, nor does the fact that it looks like an office or contains office furniture. However, he stated that the fact that a property is empty simply shows that it is not in use, but contended that it remains relevant rateable property. Mr. Donovan stated that from his point of view there was no evidence that any part of the subject property was in domestic or residential use, aside from a fold-up bed with a sheet on it in one of the rooms and a TV point and children's study books in other rooms on the first floor.

### **Appellant's Submissions**

Mr. Swaine stated that the planning permission on the subject property was for mixed commercial and residential use, with permission for residential use only in respect of the majority of property. He submitted that the valuation placed on the property by the respondent was excessive and that the respondent had failed to take into account the external condition of the property. Mr. Swaine argued that the property was not completed to a high standard as was suggested in Mr. Donovan's précis.

Mr. Swaine further stated that the respondent had valued parts of the property which were designated as domestic and accordingly he submitted should not have been rated in accordance with Paragraph 6 of Schedule 4 of the Valuation Act, 2001. He accepted that the first floor accommodation was fitted out to a high standard, but denied that this made it an office. Mr. Swaine submitted that not only must a property be an office in order to be rated as such, but that it must be used as such. He stated that the planning permission on the property clearly distinguishes between commercial and residential use and that those rooms designated as residential are not being used as office space.

Mr. Swaine referred to Section 48 of the Valuation Act 2001, which deals with the method of determining a property's value, other than in respect of a revision in accordance with Section 28(4). He contended that if he was to lease the property, any potential tenant would exclude

the domestic element in his rental bid on the grounds that *inter alia* the local authority would bring enforcement proceedings if it was used for commercial purposes. Therefore, Mr. Swaine submitted it was highly unlikely he would be able to lease the entire property. He argued that a significant discount would have to be given to take account of the possibility of enforcement.

It was submitted by Mr. Swaine that it was well established that taxation statutes, including those relating to rates, be strictly interpreted. He referred to the case of **Revenue Commissioners v. Doorly** [1933] I.R. 750, where Kennedy C.J. stated that it was necessary to, “... *determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms, on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute ...*” and further that, “*Now the exemption of tax, with which we are immediately concerned is governed by the same considerations ...*”

Relying on these *dicta*, Mr. Swaine submitted that the Valuation Act, 2001 clearly and unambiguously exempts domestic property from rates and that given that the planning permission on the property is primarily for domestic use, the onus should therefore be on the respondent to show that the property is being used for purposes contrary to its planning permission. Mr. Swaine contended that Mr. Donovan had failed to put forward any evidence, other than his own observations, that the entirety of the property was in commercial use.

Mr. Swaine was asked by the Tribunal whether he could point to any authorities in support of his propositions that where planning permission on a property is for domestic use, that that property should be deemed domestic for rating purposes and that if a property is not in use as an office that it should not be rated as such, but he was unable to do so.

### **Respondent’s Submissions**

Ms. O’Neill firstly stated that in respect of the issue of quantum, that there was no evidence before the Tribunal in this regard, save for that set out in Mr. Donovan’s précis. She argued that if an appellant wishes to take issue with the quantum of a valuation, the onus is on him/her to present evidence in support of his/her contention of valuation to the Tribunal.

Ms. O'Neill referred to Schedule 3, paragraph 1(a) of the Valuation Act, 2001, which provides as relevant property, buildings. Property that is unoccupied but is capable of rateable occupation by the owner of the property is relevant property by virtue of Schedule 3, paragraph 2(b). Therefore, Ms. O'Neill submitted the fact that rooms are unoccupied does not bring them outside the charge to rates. Ms. O'Neill also referred to Paragraph 6 of Schedule 4 of the 2001 Act, which exempts domestic premises. Domestic premises is defined in Section 3 of the Act as, "*any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel.*" Mixed premises is also defined in Section 3 as, "*a property which consists wholly or partly of a building which is used partly as a dwelling to a significant extent and partly for another or other purposes to such an extent.*"

Having regard to these provisions, Ms. O'Neill submitted that at best the subject property is a mixed premises, although she asserted that there was no evidence that the property was used to a significant extent for domestic purposes. In any event, if the subject property is deemed to be a mixed premises, Ms. O'Neill submitted that same cannot be a domestic premises for the purposes of the Valuation Act, 2001 and therefore does not qualify for an exemption.

Ms. O'Neill made reference to the case of **Paul Sullivan v. Commissioner of Valuation** (VA05/1/032), where it was held that a room in a house, which was used as an office by the occupier for the purposes of his business, but which was also used by the rest of his family, was used for non-domestic purposes, thereby rendering the premises a mixed premises and the room in question rateable. She also referred to **Nangles Nurseries v. Commissioner of Valuation** [2008] IEHC 73, where it was held by Mac Menamin J. in the High Court, that exemptions should be construed strictly against the ratepayer.

## **Findings**

1. In determining the rateability of the subject property, the Tribunal must have regard to the provisions of the Valuation Act, 2001. The relevant provisions were set out by Ms. O'Neill in her submissions. The exempting provision in Paragraph 6 of Schedule 4 of the 2001 Act, which exempts domestic premises, must be read in conjunction with the interpretation section of the Act in Section 3. Section 3 defines domestic premises as, "*any property which consists wholly or partly of premises used as a dwelling and which is neither a mixed premises nor an apart-hotel.*" In turn, mixed



premises is defined as, “*a property which consists wholly or partly of a building which is used partly as a dwelling to a significant extent and partly for another or other purposes to such an extent.*”

2. Having regard to the evidence presented before the Tribunal, the Tribunal is of the view that the subject property was not in use to any extent as a domestic premises. It was not disputed by Mr. Swaine that the entirety of the ground floor, save for the “Dining Room” (Room 2), was used for commercial purposes. In addition, Mr. Swaine gave evidence that one of the rooms on the first floor (Room 8) was used by the business’ accountant. Furthermore, his evidence was that the attic was used for the storage of files related to a previous solicitor’s practice in which he was involved. Accordingly, all of these rooms are clearly in commercial use.
3. Dealing with the disputed rooms, which Mr. Swaine denied were in use as office space, namely Room 2 on the ground floor and Rooms 6, 7 and 9 on the first floor, it would appear that such rooms are not occupied, or at least not occupied to any appreciable extent. However, Mr. Donovan’s evidence was that, having regard to the fit-out, cabling and lighting, same were set up for office rather than domestic use. Office furniture was stored in Rooms 6 and 7, and Room 2 contained an oval table with leather office-type chairs around it. The Tribunal accepts Mr. Donovan’s evidence and finds that such rooms are fitted out as office space.
4. Even if the Tribunal accepts that such rooms are not occupied, same are still rateable in accordance with Schedule 3, paragraph 2(b), which provides as relevant property, “*Property that is unoccupied but is capable being the subject of rateable occupation by the owner of the property*”. It is found by the Tribunal that these rooms are capable of rateable occupation as office space and thus are relevant rateable property.
5. The property as it currently appears in the Valuation List has a rateable valuation of €80. It is noted however, that Mr. Donovan amended his valuation to €75 following a formal inspection of the property. Although Mr. Swaine did take issue with the valuation in his submissions, he advanced no evidence in support of an alternative valuation, in particular he did not refer to any comparative properties and nor did he challenge Mr. Donovan’s comparisons nor the rates that he applied to the property.

The onus of showing that the valuation of the property concerned, appearing in the Valuation List is incorrect is on the appellant and Mr. Swaine has not discharged this onus. Accordingly, the Tribunal determines that the RV of the property is €75.

**Determination**

Having regard to the foregoing the Tribunal determines that the property the subject of the appeal is not a domestic premises and that the Rateable Valuation is €75.

And the Tribunal so determines.