

Appeal No. VA96/2/061 to  
VA96/2/063

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

**Greythorn Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Offices (in progress) and Yard at Map Ref: 31, 32 & 33 Merrion Street Upper, Ward:  
Mansion House B2, County Borough of Dublin  
Beneficial Occupation

**B E F O R E**

**Mary Devins Solicitor**

**Deputy Chairman**

**Fred Devlin FRICS.ACI Arb.**

**Deputy Chairman**

**Brid Mimmagh Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 2ND DAY OF APRIL, 1997**

By Notices of Appeal dated the 25th April, 1996 the appellant appealed against the determinations of the Commissioner of Valuation in fixing rateable valuations of £90 each on the hereditaments above described.

The grounds of appeal as set out in the Notices of Appeal were that:-

- "1. The valuation is excessive and inequitable.
2. The valuation is bad in law.

3. The premises the subject matter of this appeal were not capable of beneficial occupation at any relevant time and accordingly the valuation attributed to same should be struck out as the premises did not constitute a rateable hereditament at the relevant time.
4. The Commissioner failed to have any regard to the evidence furnished to him at First Appeal that the premises in question were incapable of beneficial occupation at the time of the revision and required extensive works to be carried out thereafter before they were capable of being let or being occupied at the time or at any relevant time thereafter.
5. Having regard to the condition of the subject and the "actual state" of same the valuation placed upon the same by the Commissioner failed to have regard to the provisions of Section 11 of the Valuation Act, 1852."

**The Property:**

The property is situated on the east side of Merrion Street close to its junction with Merrion Square South. The premises comprises three four storey over basement georgian buildings of brick construction under pitched slated roofs incorporating timber framed windows.

**Valuation History:**

No's. 31, 32 and 33 were purchased by Greythorn Limited from the Commissioner of Public Works in Ireland in March, 1992. The hereditaments at that time were distinguished in the Valuation Lists as exempt with valuations as follows:-

- |     |        |   |                   |
|-----|--------|---|-------------------|
| (1) | No. 31 | - | RV £90            |
| (2) | No. 32 | - | RV £90            |
| (3) | No. 33 | - | RV £75 and RV £15 |

In August, 1993 the valuations were revised and issued unchanged with the exception of No. 33 wherein the two rateable valuations were amalgamated to a single rateable valuation £90. The description and occupier were amended. They were no longer distinguished as exempt in the Valuation Office Lists. The properties were again listed for revision on the 29th July, 1994 by Dublin Corporation. The result of the quarterly revision issued in November, 1994 and the valuations of £90 each were issued unchanged. These valuations were appealed to the Commissioner of Valuation. No change took place at First Appeal. It is thus against these determinations of the Commissioner of Valuation that an appeal lies to the Tribunal.

**Written Submissions:**

A written submission was received on the 12th December, 1996 from Ms. Sheelagh O'Buachalla, BA ASCS, an Associate of the Society of Chartered Surveyors and a Director of Donal O'Buachalla & Company Limited on behalf of the appellant. In her written submission, Ms. O'Buachalla set out the valuation history of the subject premises, its location and a brief description. Ms. O'Buachalla submitted in the written submission that the valuations of £90 each in respect of No's. 31, 32 and 33 Merrion Street should be struck out on the basis that at the date of the revision the buildings were incomplete and therefore incapable of beneficial use and therefore had no letting value.

A written submission in respect of each premises was received from Mr. Tom Cuddihy, B.Agr.Sc., a District Valuer with 29 years experience in the Valuation Office on behalf of the respondent. In the written submission Mr. Cuddihy said that the quantum was not in dispute and that in his opinion the existing rateable valuations were justified on the grounds that the premises were previously used by the Department of Agriculture, were vacated with a view to sale and subsequently occupied as offices following sale and refurbishment. Also the premises were undergoing reconstruction on the relevant valuation date.

**Oral Hearing:**

At the oral hearing which took place in Dublin on the 20th December, 1996 Mr. Aindrias O'Caomh, S.C. instructed by Messrs. Robert Walsh & Company, Solicitors appeared on behalf of the appellant.

The respondent was represented by Mr. Paul Gardiner, B.L. instructed by the Chief State Solicitor.

Also present were Ms. Sheelagh O'Buachalla of Messrs. Donal O'Buachalla & Company Limited, Mr. Brendan Brady, Director of Brady Associates, Consulting Engineers and Mr. Tom Cuddihy of the Valuation Office.

**Submissions:**

Mr. O'Caomh submitted that the subject premises must be valued *rebus sic stantibus* at the relevant valuation date, i.e. November, 1994.

He further submitted that at that date the property was not capable of beneficial occupation since no hypothetical tenant would consider renting the property knowing the considerable expenditure necessary to render the property habitable.

On the same basis Mr. O'Caoimh while accepting that the appellant company was in occupation, said that the property was of no value to it and therefore that the appellant company could not be said to be in beneficial occupation.

Referring to the *Harpers Stores case* Mr. O'Caoimh submitted that the present case should be distinguished in that the appellant company was not at any stage in actual occupation; that this was not simply a question of a temporary break in business to allow renovation works to be carried out but that it was closer to what might be described as a half built house and should therefore be exempt.

Finally Mr. O'Caoimh submitted that the case of *Wyeth Medica Ireland (For Polaroid Ireland) v. Commissioner of Valuation (VA94/2/006)* should also be distinguished in that the premises taken over by Wyeth Medica were still relatively modern buildings capable of occupation whereas the subject was clearly not capable of being let and certainly not let as offices as described in the Valuation Office Lists.

Mr. Gardiner submitted that the facts of the subject case were almost identical to those in Wyeth Medica. Indeed, he pointed out, that the period of building work in the subject was considerably less than that in Wyeth Medica and further that the evidence in the latter case indicated clearly that the main reason for Wyeth Medica's purchase of that particular property was its location as was the situation governing the purchase of the subject property by the appellant company.

Mr. Gardiner finally submitted that the appellant did have such use of the property as was reasonable to infer was within his contemplation in taking it.

**Evidence:**

Mr. Brady gave evidence that the premises when purchased by the appellant were in a substantially derelict condition, with holes in the roof, water pouring down through the buildings, windows and doors missing and no services connected. He said that Greythorn Limited initially secured the premises only by roofing them, replacing windows, doors and floors and by treating the dry-rot.

Mr. Brady confirmed that the contract for the works to be carried out in numbers 32 and 33 was entered into in January, 1995 for the sum of £260,000 approximately and was completed in or around June/July, 1995. In relation to number 31, Mr. Brady said that the contract, in the sum of £137,000, was entered into in June, 1995 and completed in October or November, 1995.

Replying to Mr. Gardiner in the course of cross examination Mr. Brady agreed that the photographs of the premises produced at hearing were of the premises as they were in March, 1992 and not in November, 1994 which was the relevant valuation date.

Ms. O'Buachalla's written précis was accepted by the respondent without being admitted to formal proof save for the final paragraph thereof which was, it was agreed, tendentious.

In the course of cross examination Mr. Cuddihy said that the 1994 figure of £90 rateable valuation was the previous very old valuation and had not been based on net annual value. He explained that the premises had been distinguished by reason of their occupation by the State and that what took place at revision was simply the removal of distinguishment.

Mr. Cuddihy, again in reply to Mr. Gardiner, said that in his opinion the premises could not have been occupied in 1994 and that they would have had, at that date, what he described as a basic rental value.

**Determination:**

The Tribunal is satisfied that the facts of this case are similar to those in Wyeth Medica Ireland and that the appellant company was in beneficial i.e. rateable occupation of the property at the relevant valuation date. The occupation of the appellant company satisfies all the well-established criteria of rateable occupation and the premises could not be reasonably described as in any way akin to an unfinished new building.

The premises had been purchased in their actual state in 1992 for approximately £500,000 and immediately works to make the buildings weather-proof had been carried out. It is accepted that the major refurbishment and reconstruction works were not carried out until after the relevant valuation date.

The premises must be valued *rebus sic stantibus* as of November, 1994 and therefore, the Tribunal, noting that there is no dispute as to quantum between the parties, affirms the decision of the respondent.