

Appeal No. VA01/1/015 &
VA01/1/016

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

Esat Telecom

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Cable at Townland: Carhoo and Rathmorgan respectively County Cork
Notification of Revision under Section 3, 1988 Valuation Act

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

Fred Devlin - FRICS. FSCS

Deputy Chairperson

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 31ST DAY OF MARCH, 2003

Background

By Notice of Appeal dated the 18th April 2001 the Appellant appealed to the Valuation Tribunal in respect of decisions made by Commissioner of Valuation dated the 28th March 2001. The Appellant sent in a letter with their Notices of Appeal setting out the grounds of these appeals. Amongst the grounds on which the Appellant seeks to rely is that no notice pursuant to Section 3(4)(a) or 3(4)(b) of the Valuation Act, 1988 has been served on the Appellant.

A procedural issue arises. The Valuation Act of 2001 has since come into effect. Under the 1988 Act the Appellant would have been entitled to a hearing on the preliminary issue of whether or not it had been appropriately notified in accordance with Section 3 of the Valuation Act 1988. It appears that the duties of notification provided for in Section 3 of the 1988 Act are not provided for under the provisions of the Valuation Act of 2001. The issue for determination is: how should the Tribunal deal with an appeal under the 1988 Act when that appeal is grounded upon provisions that appear no longer apply under the 2001 Act?

The submissions

As this is a technical procedural area the Tribunal sought written submissions in advance from the Appellant and from the Respondent. We were obliged to receive these submissions from both sides, which were of considerable assistance. It should be said that both the Appellant and Respondent were represented by Counsel and made submissions in relation to the matter orally also at the hearing hereof on 20th January 2003. Again, these submissions were of considerable assistance to the Tribunal.

It is noteworthy that the submissions of the Appellant and the Respondent were to the same effect. Put bluntly, both parties submitted that the provisions of the Valuation Act 2001 did not remove the pre-existing entitlement which the Appellant had to an oral hearing on the issues raised by him bearing on notification arising from Section 3 of the Valuation Act of 1988, even though such provisions do not appear to have been expressly continued in the 2001 Act. While the fact that both parties' submissions are to the same effect does not in itself relieve the Tribunal of applying its own judgment and expertise to the matter, it is obviously of very considerable significance.

Determination

In the view of the Tribunal, the Appellant retains its entitlement to be heard by way of an oral hearing in relation to the notification issues raised by it under Section 3 of the Valuation Act of 1988, notwithstanding the coming into effect of the Valuation Act of 2001. In coming to this conclusion the Tribunal relies on the following:

- (1) The Valuation Act of 2001 expressly provides (at Section 57) transitional provisions in relation to matters not completed under the Act of 1988 (or indeed the Act of 1852).

- (2) Section 57(9) of the Valuation Act 2001 does appear to allow an officer of the Commissioner, the Commissioner or the Tribunal to dispose of an application or an appeal in such a manner as it considers appropriate where it is of the opinion that the property concerned is property of a nature that could not have been the subject of an appointment under Section 57(5) or 57(7). This appears to relate to the applicability of the new Act to certain types of property rather than to procedural objections taken under the old Act. It is not necessary to set out an exhaustive interpretation of Section 57(9). However, on its face it does not appear to be drafted sufficiently widely to allow an Officer of the Commissioner, the Commissioner or the Tribunal to exclude an Appellant from pursuing an oral hearing in relation to notification under Section 3 of Valuation Act of 1988. The section in question seems to deal with certain properties which, while formerly rateable under the 1988 Act, might not now be rateable under the 2001 Act, for example, certain of those properties referred to in Schedule 4 of the 2001 Act.
- (3) Significantly, it is our view that the express provisions of Section 57, and in particular Section 57(7), appear to require appeals launched under Section 3 of the 1988 Act that have not been heard by the Tribunal under that Act before the commencement of the 2001 Act to be deemed to be valid appeals. Further support for this interpretation is found in Section 57(8) of the 2001 Act.
- (4) Both parties submitted that a person in the position of the Appellant had under the 1988 Act a right to seek an oral hearing in relation to the issues of notification raised under Section 3 of the Act of 1988. This seems to us to be a correct statement of the law as it was under the 1988 Act. It also seems that a very clear and express provision would be required to remove one's entitlement to pursue an appeal in circumstances where the appeal had already been commenced under the 1988 Act before the coming into effect of Section 57 of the 2001 Act. To hold otherwise would be retrospectively to remove an entitlement to pursue an appeal that had already been commenced. It seems to us that this would be inconsistent, not only with the provisions of the Interpretation Act of 1937, but also with the fundamental principles of natural and constitutional justice. It is our view that if the Act of 2001 can be interpreted in such a way as to avoid such a fundamental unfairness without doing violence to the language of the Act, then this is the appropriate

interpretation to give to the wording of the Act. Happily, the Act clearly and in our view unambiguously admits of such an interpretation. The Act clearly provides for transitional provisions whereby an appeal in relation to an issue such as notification raised under Section 3 of the 1988 Act can, having regard to *inter alia* the provisions of Section 57(7) of the Valuation Act of 2001, be dealt with by way of oral hearing notwithstanding the coming into effect of the Valuation Act of 2001, in particular at Section 57(9).

Accordingly the Tribunal determines that the Appellant is entitled to pursue its appeal on the grounds set out in its Notice of Appeal dated the 18th April 2001.