

Appeal No. VA04/1/015 &
016

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

Teresa Doyle T/A Quicksilver & Happy Talk Ltd. APPELLANTS

and

Commissioner of Valuation RESPONDENT

RE: Shops at Lot No. 1.2AB.3/Barrow 6 (VA04/1/015) & Lot No. 1.2AB.3/Barrow 3 (VA04/1/016), Liffey Valley Shopping Centre, Palmerstown Upper, Palmerstown West, County Dublin

B E F O R E

Frank Malone

Deputy Chairperson

Frank O'Donnell - B.Agr.Sc. FIAVI.

Member

Brian Larkin - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF DECEMBER, 2004

By Notices of Appeal dated the 1st day of March, 2004 the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €63.49 on each of the above described relevant properties.

The grounds of Appeal as set out in the Notices of Appeal are:

" This barrow does not constitute relevant property under the Valuation Act, 2001. If it was considered relevant property this is not the case as it is no longer relevant property. Furthermore the barrow has changed location which is a material change of circumstances. The description "Shop" is incorrect. Moveable barrows are not relevant property. This is not an easement or a right over land." (See also letter attached to Notice of Appeal).

The appeals proceeded by way of an oral hearing, which took place in the Valuation Tribunal Offices, Ormond House, Ormond Quay Upper, Dublin 7, on the 19th day of May, 2004. By agreement between the parties the appeals were heard together. Mr. Owen Hickey, BL, instructed by Ms Orla Spring, Solicitor, Michael Cusack Solicitors, Sandymount Green, Sandymount, Dublin 4 appeared on behalf of the appellants together with Mr. Tadhg Donnelly of Brian Bagnall & Associates, Surveyors and Valuers. Mr. Brendan Conway, BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent together with Ms. Orlaith Ryan, Valuer, Valuation Office. Evidence was given by Ms Teresa Doyle in respect of appeal VA04/1/015 - Teresa Doyle t/a Quicksilver and by Mr David Houlton in respect of appeal VA04/1/016 - Happy Talk Limited.

In accordance with the Rules of the Tribunal, prior to the commencement of the hearing the parties had exchanged their précis of evidence and submitted them to the Tribunal. From the evidence so tendered the following emerged as being the facts relevant and material to the appeals.

THE NOTICES OF APPEAL TO THE TRIBUNAL

See Appendices 1 and 2 to this Judgment

LOCATION AND DESCRIPTION OF THE SUBJECT PROPERTIES

1) Appeal VA04/1/015 - Teresa Doyle t/a Quicksilver

The property is a retail outlet on wheels located in the central corridor in Liffey Valley Shopping Centre. The unit is referred to as “Mall Barrow 6” and is coloured red on the plan attached to the copy Licence Agreement at Appendix 3 to this Judgment. The Liffey Valley Shopping Centre is one of the largest shopping centres in the country, located in Palmerstown just off the M50 Motorway.

Use

The property is in use as a retail outlet by Teresa Doyle, principal of Quicksilver which specialises in retail jewellery and fashion accessories from mobile units principally located in shopping centre public malls.

Tenure

The subject property is held under an annual Licence Agreement. The original Licence Agreement commenced in December, 1999.

2) Appeal VA04/1/016 - Happy Talk Limited

The property is a retail outlet on wheels located in the central corridor in Liffey Valley Shopping Centre. The unit is referred to as “Mall Barrow 3” and is hatched red on the plan attached to the copy Licence Agreement at Appendix 4 to this Judgment.

Use

The property is in retail use by Happy Talk Ltd. which sells mobile phone accessories.

Tenure

The property is held under an annual Licence Agreement. The original Licence Agreement commenced in May, 2001.

APPELLANTS’ SUBMISSIONS

1. This is a mobile unit on wheels and is not fixed.
2. Is not anywhere on the list of “relevant Property to be Valued” under the 2001 Act.
3. It can be moved from pitch to pitch as specified in the Licence Agreement see paragraph (1) Section (2) Licence Agreement
4. Very similar to traders retailing from vans or lorries.
5. The Licence Agreement is a licence to trade in a common area. The taxes and charges of such are the responsibility of the shopping centre see paragraph (9) of Landlords Covenants Licence Agreement.
6. The Quantum is not being contested in either case.

RESPONDENT’S SUBMISSIONS

In her written submission Ms. Ryan made the following comments in respect of each subject property:

The property was inspected on the 11th April, 2003. It was established that “no material change in circumstances “, as defined in the Valuation Act 2001, had occurred since the property was valued in the 2001/02 revision.

Section 28 of the Valuation Act 2001 provides for a revision officer to carry out revision only in those cases where material change of circumstance has occurred since the last revision or since a revaluation was carried out last. A material change of circumstances arises where:-

- “(a) the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or*
- (b) a change in the value of a relevant property caused by the making of structural alterations or by the total or partial destruction of any building or other erection by fire or any other physical cause, or*
- (c) the happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property, or*
- (d) the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4, or*
- (e) property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or*
- (f) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property.”*

If the Revision Officer considers that no material change of circumstance has occurred, no revision can take place and a no material change notice is issued to the applicant as was the case here.

In accordance with Section 28 of the Valuation Act 2001, no material change of circumstances has occurred to the subject property since it was assessed in the 2001/02 revision.

The subject continues to be relevant property as the occupier has the right to trade from this designated pitch within the Centre.

There are over 200 trading pitches currently valued in the Dublin City Council area under both the Valuation Act 2001 and previous legislation. These are located throughout the city on streets such as Moore Street, Thomas Street, Lower Camden Street, O’Connell Bridge and various others.

A schedule of other barrows valued in Liffey Valley Shopping Centre was included with Ms Ryan's précis of evidence (see Appendix 5 to this Judgment).

VALUATION HISTORIES AND RELEVANT DATES

The properties were assessed in the 2001/02 revision at an RV of €63.49 each.

The properties were listed for revision by the occupiers and no material change of circumstances notices were issued on 9th July, 2003.

First Appeals were lodged on the 18th August, 2003.

First Appeals were concluded. No changes were made.

Appeals were lodged to the Valuation Tribunal on the 1st March, 2004.

As the Quantum in both cases was not being contested Mr. Donnelly was not called on to give evidence.

APPELLANTS' CASE

Appeal VA04/1/015 – Teresa t/a Quicksilver

Ms. Teresa Doyle, having taken the oath, gave evidence as follows:

She stated that the subject is a barrow on wheels, of approximately 1.5 metres by 1 metre with four let-down blinds, with storage underneath and connected to electricity via a flex which is plugged into a socket in the floor of the mall. She retails silver jewellery and trades seven days a week. She stated that there are three circumstances under which the barrow can be moved:

- a) by cleaners on a regular basis
- b) at Christmas time to allow for Christmas decorations
- c) following complaints from neighbouring shops

She commenced her business in Liffey Valley in December 1999 and continues to use the same barrow which is owned by the management company. The flex is approximately 2 metres long and this determines the movement of the barrow. The pitch is not marked out on the mall but is identified on a map. She stated that she has no dispute with management and trades in accordance with the Licence Agreement.

Appeal VA04/1/016 - Happy Talk Limited

Mr. Houlton, director of Happy Talk Limited, gave sworn testimony to the Tribunal. He stated that he has been in operation in Liffey Valley since 2001 and always at pitch number 3, which is not marked out on the ground but identified on a plan attached to the Licence Agreement. He stated that the barrow is moved at times similar to Quicksilver. In this case, the barrow is owned by the appellant.

Mr. Owen Hickey, Counsel for the Appellants, relied in his legal submission on **Cement Limited V Commissioner of Valuation (1960) IR 283** and in particular pages 301 and 302 thereof.

He stated that the subject is described as a building on the valuation certificate but that it is clearly not a building. It is a barrow on wheels which can be moved at any time. Therefore it is not relevant property and cannot be on the rating list. In dealing with material change of circumstances Mr. Hickey stated in his opinion the subject was wrongly rated in 2001 and should now be excluded from the valuation list. When property is wrongly rated, the only avenue open is under section 3 (c) “material change of circumstances” of the Valuation Act 2001:

“(c) the happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property, or

This is the only way in which a wrong can be made right.

RESPONDENT’S CASE

Ms. Orraith Ryan, on behalf of the Respondent, in her sworn testimony to the Tribunal. stated that these two barrows were retail outlets where products are sold on a designated pitch and should be rated. Cross-examined by Mr. Hickey, she stated that the subjects should be valued under Schedule 3, paragraph 1(i) of the Valuation Act 2001 as “easements and other rights over land”. Dealing with no material change of circumstances Ms Ryan said the properties were inspected on the 11th April 2003. It was established that no material change of circumstances, as defined in the Valuation Act 2001, had occurred since the properties were valued in the 2001/02 revision.

Mr. Brendan Conway, Counsel for the Respondent stated that what falls to be valued is

the right to trade granted by the Licence to the occupier. That right is properly classifiable in Schedule 3, paragraph 1(i) of the Valuation Act 2001, as "... other rights over land." Under the previous regime such a right over land granted under this type of licence also created a rateable valuation. He cited here **Telecom Eireann v Commissioner of Valuation VA90/3/069**.

In dealing with Ms. Ryan's written submission which she offered in her capacity as a Valuer charged with this case, the rateability issue is for the Tribunal to find on, based on legal submissions by both parties. The barrows can be described as retail outlets. Each person is in the immediate use of the property and the right of occupancy is created by the Licence.

Mr. Conway relied on **Telecom Eireann v Commissioner of Valuation High Court Judgement (1994) IR 1 66**. This was overturned by the Supreme Court. In the case of the subject properties, the Licence Agreement in each case do create a right over land. The subject properties are now and always were relevant properties and are therefore rateable as per Schedule 3, paragraph (1)(i) "other rights over land." Referring to the Valuation Certificates, the description of shop is correct and each property is a retail outlet. If the description is incorrect, the Tribunal has the power to amend that detail in relation to the properties as per section 37(1) of the Valuation Act 2001 which states: *"The Tribunal shall consider an appeal made to it under section 34 and may, as it thinks appropriate-*

(b) allow the appeal, and, accordingly, do whichever of the following is appropriate-

(i) amend the value of, or any other detail in relation to, the property, the subject of the appeal, as stated in the valuation certificate issued under paragraph (b)(i) or (b)(ii) of section 33(2),

(ii) decide that the property, the subject of the appeal, ought to be included in, or, as the case may be, ought to be excluded from, the relevant valuation list and, in the case of a decision that the property ought to be so included, determine the value of the property,

(iii) amend any detail in relation to the property, the subject of the appeal, stated in the notification made under section 33(2)(b)(iii)."

FINDINGS AND DETERMINATION

1. The Tribunal find that the subject properties in each of these appeals is a Relevant Property listed at Paragraph 1(i) of Schedule 3 of the Valuation Act, 2001 being “other rights over land” and as such each of the subject properties is rateable.

2. (a) A material change of circumstances in each of these appeals as provided in Section 28 of the Valuation Act, 2001 has not occurred since the 2001/02 revision in each case and consequently the Revision Officer correctly issued a no material change of circumstances notice in each case and consequently the revision requested by the Appellant in each case can not take place.

(b) The properties were rateable under the old Valuation Acts (1852 to 1988) and continue to be so rateable and relevant properties under the Valuation Act 2001 and consequently there is no material change of circumstances as outlined in paragraph (c) of the definition of the “material change of circumstances” in section 3 of the 2001 Act.

(c) The Tribunal finds that the movement of the barrows as outlined in the evidence is not a material change of circumstances.

3. The Appellant in each appeal argued that the subject property was not buildings as described in the Valuation Certificates. This issue was not raised at First Appeal stage and the Tribunal decide that the said issue can not therefore be raised before the Tribunal there being no exceptional circumstances present where the interest of justice requires the raising of this issue. Further this issue was not raised in the respective Notices of Appeal to this Tribunal and for this additional reason can not be raised before the Tribunal.