

Appeal No. VA05/2/028

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

Rathbeale Service Station Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Garage/Filling Station at Lot No. 7b, Commons West, Swords Lissenhall, Swords, County Dublin. PRELIMINARY LEGAL ISSUE: Whether the respondent complied with Section 29(3) of the Valuation Act 2001

B E F O R E

John Kerr - BBS. ASCS. ARICS. FIAVI

Deputy Chairperson

Leonie Reynolds - Barrister

Member

Michael McWey - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF SEPTEMBER, 2005

By Notice of Appeal dated the 20th day of May, 2005, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €80.00 on the above described relevant property. The Grounds of Appeal as set out in the Notice of Appeal (a copy of which is at Appendix 1 to this Judgment) are: "6(a)(i) On the basis that the RV is excessive, inequitable & bad in law; 6(c)(iii)(I) The occupiers representations were not taken into account by the revision officer; 6(c)(iii)(II) The property was not revised in accordance with the terms of the Act in that it was not compared with comparable properties as set out in S.49(1) of 2001 Act."

PRELIMINARY LEGAL ISSUE: Whether the respondent complied with Section 29(3) of the Valuation Act 2001

The appeal proceeded by way of an oral hearing, which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay, Dublin 7, on the 26th July, 2005. The appellant was represented by Mr. Eamonn Halpin, B.Sc. (Surveying) MRICS., MIAVI., and the respondent by Mr. Damien Curran, MRICS., ASCS., BSc (Surv)., a Team Leader in the Valuation Office.

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

The Property

The property comprises a redeveloped neighbourhood petrol station with convenience shop, ancillary yard, car wash and customer parking, located on Brackenstown Road, approximately ½ mile from the centre of Swords, Co. Dublin.

Tenure

Freehold

Valuation History

- September 2004: Property inspected by Revision Officer, Mr. Damien Curran.
- 29th October, 2004: Proposed Valuation Certificate issued indicating a valuation of €680.
- 24th November, 2004: Rating Consultants, E. Halpin & Company, made representations to Revision Officer, Mr. Damien Curran.
- 3rd December, 2004: Valuation Certificate issued fixing the RV at €680.
- 10th January, 2005: Appellant files appeal through Rating Consultant.
- 28th April, 2005: Result of First Appeal confirms RV at €680.
- 20th May, 2005: Appeal filed with the Valuation Tribunal.

Appellant's Case

Mr. Eamonn Halpin, on behalf of the appellant introduced certain amendments, corrections and changes to the text of his written précis and with the concurrence of Mr. Damien Curran, present as expert witness representing the Commissioner of Valuation. Mr. Halpin then formally adopted his précis as his evidence-in-chief and commenced by providing the Tribunal with a review and synopsis of his submission.

During the course of his review of his précis of evidence, Mr. Halpin reiterated his concerns that the occupier's representations were not adequately taken into account by the Revision Officer prior to the Commissioner issuing the Valuation Certificate on the relevant property.

In order to deal with this particular matter, it was acknowledged by the parties that it should be treated as a preliminary issue, and, as a consequence, Mr. Curran was offered, and availed of, the opportunity to then cross-examine Mr. Halpin. Mr. Curran outlined for the Tribunal his view that the issue of representation had been properly dealt with by the Revision Officer, whom he acknowledged to be himself, at the appropriate time and in advance of the issuance of the Commissioner's final decision which affirmed an unchanged RV of €80. Mr. Curran referred to file notes during the course of his deliberations. He stated that he had no recollection of the alleged telephone call to Mr. Halpin on or about 6th December, 2004, and would not, he stated, have any reason to suggest that the Valuation Office did not have sufficient time available to consider representations made previously by Mr. Halpin. Following further consideration of the issue, the Tribunal adjourned to consider the views expressed by both parties.

When the Hearing reconvened, Mr. Curran was invited to the stand, took the oath and adopted his précis of evidence as his evidence-in-chief. It was noted that both parties had exchanged their respective précis some weeks in advance of the Hearing. Mr. Curran consented to cross-examination by Mr. Halpin on the aforementioned preliminary issue. In particular, Mr. Curran offered the Tribunal clarification on an earlier statement made

by him which suggested he could not locate relevant information specific to Comparison No. 2 on page 9 of Mr. Halpin's submission (see Appendix 2 to this Judgment). He explained that though the particular information he was looking for could not be located in the Valuation Office records, he relied upon verbal information provided to him by one of his colleagues who had been engaged in the revision of that particular service station in 1997.

Following detailed discussion and review of the various previous communications on this case between the parties, and noting the failure of both Valuers to concur on a number of issues, the Tribunal again adjourned to consider the preliminary issue and depending on a decision on the issue, would either reconvene the Hearing to consider the quantum issues under appeal, or not.

The Hearing was duly reconvened and the parties were advised that the Tribunal had considered all of the earlier evidence submitted in writing, the evidence adduced at the Hearing and further copy evidence introduced during the course of the hearing.

The Chairperson summarised the position, conclusion and determination of the Tribunal verbally, as follows:

Confirming reference to the subject Appeal, i.e. **VA05/2/028 - Rathbeale Service Station**, the parties were then informed that the Tribunal, in reaching its determination, bore reference to the following:-

1. Notice of Appeal dated 20th May, 2005 (see Appendix 1), received by the Valuation Tribunal on 23rd May, 2005, and in particular the Grounds of Appeal set out in paragraph 6.(c)(iii)(I) therein, which inferred that the representations made by the occupier, through his Consultant, were not taken into account by the Revision Officer.

2. The copy of the Notice of Appeal served by the Valuation Tribunal on the Commissioner on 23rd May, 2005.
3. The Notice of Hearing (see Appendix 3) issued to the Commissioner on 24th May, 2005 which drew the Commissioner's attention to the legal grounds of appeal raised by the appellant.
4. The appellant's précis of evidence received by the Tribunal on 12th July, 2005, which sought two remedies. One of these was relevant in the context of expressed inadequate consideration of representations earlier filed with the Revision Officer and which specifically referred on Page 3 therein (see Appendix 4) to a telephone call, allegedly made by the Revision Officer on or about 6th December, 2004, declaring that the said communication confirmed that the Revision Officer was unable to fully consider the appellant's representations due to pressure to issue a decision on the revision. In addition, at Page 5 of the same précis (see Appendix 5), under heading "Tribunal Stage" (ii), Mr. Halpin referred to a claim made again that the occupier's representations, in the occupier's view, were not taken into account by the Revision Officer, and within the same page under the heading "**Remedies Sought**", subheading "In the Alternative", the appellant's précis stated as follows:- "If it is held that the property was not property (*taken to read properly*) revised, then the RV should be struck out and the OV (*taken to mean Original Valuation*) restored."
5. A copy letter dated 10th day of January, 2005 (see Appendix 6), issued by Eamon Halpin & Company, addressed to the Appeal Officer of the Valuation Office, by reference to Property Record No. 388587, Clients: Rathbeale Service Station Ltd., contained a second sentence as follows:- "I would request that our case put forward at the representations stage now be considered as this was not possible at that time due to time pressures on the Revision Officer". The Tribunal had been informed earlier by Mr. Curran that

such correspondence related to First Appeal, and as it was addressed to the Appeal Officer, was not of particular relevance to his task as the Revision Officer, though the contents of same had been brought to his attention. The said letter also contained a third sentence which read as follows:-
“Additionally, I would welcome the opportunity to discuss matters with you before the final appeal decision is issued”.

Conclusion and Determination

The Tribunal was not provided with any evidence or argument by the parties indicating a response to that particular letter of 10th January 2005, as noted above, and considering same in the context of each of the aforementioned points numbered 1 to 5 as outlined, the Tribunal considers that the matter and/or degree of consideration given to the representations raised in the Notice of Appeal, and dealt with herein and at the Hearing as a preliminary issue, is fundamental to this particular case. In this instance the Tribunal is not satisfied that Section 29(3) of Part 6 of the Valuation Act 2001 was complied with by the Revision Officer. Accordingly, the Tribunal determines the valuation to be a nullity and the rate at the foot of the valuation also a nullity and the rate to be struck out. The revision process commenced under section 27 of the Valuation Act 2001 is therefore at an end.

Appendices

Appendix 1 – Copy of Notice of Appeal dated 20th May 2005

Appendix 2 – Copy of Page 9 of the appellant' précis of evidence

Appendix 3 – Copy of Notice of Hearing dated 24th May 2005 to the Commissioner

Appendix 4 - Copy of Page 3 of the appellant's précis of evidence

Appendix 5 - Copy of Page 5 of the appellant's précis of evidence

Appendix 6 – Copy of letter dated 10th January 2005 from Eamonn Halpin & Company
addressed to Appeal Officer, Valuation Office