

Appeal No. VA90/2/048

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

Ashfield Holdings Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices and Car Park (incl. 1-5 & 5ab Glovers Alley) County Borough of Dublin

B E F O R E
Mary Devins

Solicitor (Acting Chairman)

Padraig Connellan

Solicitor

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF JANUARY, 1991

By notice of appeal dated 23 July, 1990, the appellants appealed against the determination of the Commissioner of Valuation in fixing the Rateable Valuation of the above described hereditament at £215.00

The plot of ground which is the subject of this appeal was the site of the former Stephen's Green cinema and adjoining buildings, which were purchased by the appellants in 1987 and subsequently demolished. Pending redevelopment, the cleared site was let for car parking for a term of six months from 13th April 1989 and on a week to week basis thereafter.

VALUATION HISTORY

1. All buildings except the cinema had been demolished and struck out since 1984 and a valuation of £700 remained on the cinema until 1989.
2. Following revision in 1989 a valuation of £500 total was placed on the property.
3. On First Appeal the valuation was reduced to £215.00

ORAL HEARING

At the oral hearing which took place in Dublin on 12th December, 1990, Mr Donal O'Donnell B.L., instructed by Messrs Corrigan & Corrigan, Solicitors appeared on behalf of the appellants. Mr Aindrias O'Caoimh, B.L., instructed by the Chief State Solicitor, appeared on behalf of the respondent. Also present were Mr D M Murphy, Solicitor, of Messrs Corrigan & Corrigan, Mr Donal O'Buachalla of Messrs Donal O'Buachalla & Co., Valuers and Mr Peter Conlon, Staff Valuer, of the Valuation Office.

Mr O'Buachalla referred to his written submission dated 6th December 1990 and explained that the subject hereditament in its present state was not suitable for the hotel development as planned by the appellant, and that plans to enlarge the site had not been successful to date.

He stated that the cinema building had not been fully demolished until April 1989, at which stage it was let on a temporary convenience letting, for car parking. He pointed out that under the terms of the letting agreement the tenant was to make all necessary applications for Planning Permission and Building Bye- Law Approval. Planning Permission was refused on 16th January 1989. The property continued to be used as a car-park. On 15th January 1990 the Corporation served a Notice of Motion on the owners and occupiers, prohibiting the continuance of use as a car-park. By Order of the High Court dated 26th February, 1990, Gannon J. determined that the user of the site should cease, but put a stay on the effect of that Order until the 24th May 1990 or the date of the decision of the occupier's appeal to An Bord Pleanala, whichever earlier. The decision of An Bord Pleanala, refusing permission for the retention of the car-park, issued on the 11th April 1990. The occupier vacated the site and removed all equipment in mid-May 1990.

In reply to cross-examination by Mr O'Caoimh, Mr O'Buachalla stated that the owners received the agreed rent from the occupier from April 1989 to May, 1990.

A written submission dated 4th December 1990 was received by the Tribunal from Mr Conlon on behalf of the respondent and the facts therein were agreed by both parties.

Mr Conlon produced to the Tribunal a receipt from Dublin Corporation for rates, for that period of 1990 up to 20th April 1990, and showing the balance of Rates for that year "judged irrecoverable".

In reply to questions from Mr O'Donnell, Mr Conlon stated that while the situation may have changed at the date of the appeal valuer's inspection by virtue of the refusal of planning permission, the appeal valuer had to look at the situation as it was on revision date, viz: 10th November 1989.

LEGAL SUBMISSIONS

Mr O'Donnell stated that even though the practical situation was that the rates for the relevant year had been paid, the question of rateable occupation still remained to be decided. He said that the entire year must be looked at and that since occupation lasted for less than five months of that year, such occupation was of too transient a nature as to be rateable.

Furthermore, he stated that during those five months the tenant occupied the property only on a temporary convenience letting from week to week.

Mr O'Donnell referred to the extract of Lord Radcliffe's judgement in the case of London Co. Council V Wilkins (Valuation Officer) wherein he stated 'inter alia'; "If such an occupation in fact endures for a year or more, I do not see why the occupier should not contribute to the current fund of the Rating area for that period"; and said that Lord Radcliffe seemed to consider a year or more to be a period of sufficient permanence as to be rateable.

Mr O'Caomh pointed out that while the car-park may have operated for less than five months in 1990, it had in fact been in operation for more than a year, and that occupation could not be considered too transient.

He referred the Tribunal to the case of Carroll V Mayo County Council [1967] I.R. P.364 and stated that the question of rateability does not depend solely on title but on 'de facto' occupation. Mr O'Caomh stated that on the 10th November 1989, which was the revision date, the property was being used as a car-park, had the potential of being so used, and that any change after that date could not affect the rateability of the property for the relevant period.

FINDINGS

The circumstances in this case are somewhat unusual in that while the owners of the property have brought this appeal before the Tribunal, the rated occupier has, in fact, discharged his liability for rates for 1990.

The Tribunal, however, accepts Mr O'Donnell's point that a question of law remains to be determined, viz; whether the occupation of the property was such as might be considered permanent and therefore rateable, or whether it was of such a transient nature that it did not meet the criterion of permanence which has emerged in law as one of the four essentials of rateable occupation.

Mr O'Donnell and Mr O'Caoimh agree on the law to be considered in this matter but disagree in their respective interpretations of same.

The appellants have given evidence that the property was used as a car-park from 13th April 1989 to the middle of May 1990. At the relevant date for this appeal, viz 10th November 1989, and indeed on both subsequent dates when the appeal Valuer inspected the property, viz 14th February 1990 and 15th March 1990, a car-park was being operated.

In spite of the fact that the respondent was aware that planning permission had been refused by Dublin Corporation the Tribunal is of the opinion that the "Rebus sic Stantibus" rule applies. At the relevant date the property was being used as a car-park.

The fact that its future was uncertain, pending the decision of an appeal to An Bord Pleanala did not dilute the "permanence" of the occupation. The car-park had been in operation for approximately seven months at the date of revision, occupation was certainly continuous and a weekly rent was being paid to the owners.

The Tribunal accepts Mr O'Caoimh's argument that rateability depends on 'de facto' occupation. In this case, the Special Conditions of the letting agreement under which the occupier held the property, and the tenant's compliance or non-compliance with same, do not affect the question of rateability. "Ryde on Rating", Ref. Chapter 3 P 27 states that "the occupation must be sufficiently permanent. The period of tenure is irrelevant in this connection; a weekly tenant, a tenant at will or a licensee can have a sufficiently permanent occupation for rating purposes. Occupation for eighteen months has been regarded as sufficient."

The facts in this case show that while the tenant held the property under a temporary convenience letting from week to week, his legal tenure did not denote possession which was in any way casual or intermittent.

In the case of London County Council V Wilkins (Valuation Officer), above referred to, Lord Radcliffe said "inter alia", "The Rate is an annual impost on the occupier in respect of his profitable occupation of land. It is not a capital charge on the owner in respect of the property interest in the soil."

Although the occupation of the property lasted for less than five months in 1990, nonetheless the Revising Valuer could have no prescience of this, and in the opinion of the Tribunal, correctly assessed the property's rateability.

In all the circumstances, therefore, the Tribunal affirms the determination of the Commissioner.