

Appeal No. VA90/3/093

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

**Terence Christie**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop, offices, (in prog) and grounds at 11, Jamestown Road, Finglas North C, County Borough of Dublin

**B E F O R E**

**Padraig Connellan**

**Solicitor (Acting Chairman)**

**Brian O'Farrell**

**Valuer**

**Veronica Gates**

**Barrister**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 10TH DAY OF APRIL, 1991**

By notice of appeal dated the 26th day of September, 1990, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £95 on the above described hereditament.

**Grounds of Appeal**

The appellant appealed to the Tribunal on the ground that he was unable to obtain title to the subject property and as a consequence was unable to let the premises which remained unoccupied and therefore did not attract liability to rates.

**Description of Premises**

The property is located at the junction between Ballygall Road West and Jamestown Road in Finglas. The building consists of a ground floor shop of 958 sq. ft., complete with wiring, plastering and plumbing. The external finish is brick and slate with hardwood windows and doors. The first and second floors are still in the process of being built. There is a separate entrance to these floors.

**Valuation History**

The property was listed for revision in 1989 when the rateable valuation was fixed at £95. An appeal to the Commissioner was lodged in December 1989 but no change was made in the rateable valuation.

**Written Submissions**

Prior to the oral hearing the appellant submitted a letter dated the 15th January, 1991 in which he stated that his appeal against the rateable valuation of £95 rested on the fact that he felt that he had been unable to let the subject premises because he had been unable to obtain clear title to the property from Dublin Corporation. As the premises were unoccupied, the appellant felt that he should be exempt from rates liability during the period of unoccupancy. He stated that he had endeavoured to secure a tenant for the building and enclosed a copy of a letter from his Estate Agents as proof of his efforts in that regard.

A written submission was received on the 5th February, 1991 from Mr Brian O'Flynn on behalf of the respondent. Mr O'Flynn stated that he inspected the property in May, 1990. He described the property as occupying a prominent position in the village of Finglas, at the junction of Ballygall Road West and Jamestown Road. Planning permission for the erection of the building was granted in 1981 and construction commenced in 1983. The building comprises a ground

floor shop of 958 sq. ft. net, with wiring, plastering, plumbing and toilets. There is a separate entrance to the first and second floors, work on which is still in progress. Externally the building is finished in brick and slate, with hardwood windows and doors.

Mr O'Flynn made submissions in relation to the appellant's ground of appeal. He pointed out that the ground of appeal before the Tribunal is not the same as the grounds of appeal relied upon at first appeal to the Commissioner. He cited Tribunal appeal VA/88/165 Ebeltoft Ltd t/a Hunters Licensed Premises v. Commissioner of Valuation in support of his contention that the grounds of appeal relied on by an appellant should be the same at first appeal stage and before the Tribunal.

Mr O'Flynn contended that the ground floor of the subject premises is capable of beneficial occupation and is therefore rateable. The first and second floors are incomplete and were therefore not valued. He further submitted that inability to pay rates is not a valid ground of appeal as the rateable valuation is assessed on the hereditament and not on the owner or occupier. The question of title and the inability of the appellant to enter into a letting agreement does not have a bearing on the net annual value of the hereditament as defined in S.11 Valuation (Ireland) Act, 1852.

### **Oral Hearing**

At the oral hearing which took place on the 8th day of February, 1991, Mr Terence Christie appeared on his own behalf and Mr Brian O'Flynn, a valuer with 16 years experience in the Valuation Office appeared on behalf of the Commissioner.

Mr Christie conceded that the premises could have been made usable as they are in a fully finished condition. He went on to say that his main ground of appeal, however, is that he did not have clear title to the property and that this prevented him from obtaining a tenant. Mr Christie

said that in an agreement with Dublin Corporation he had exchanged a small two bedroomed cottage in Finglas, which had become the subject of a Compulsory Purchase Order, for the site at the corner of Ballygall Road West and Jamestown Road. He built the subject property on the site which he acquired approximately 15 years ago. He said that Dublin Corporation had never completed the transaction legally and he had never been given title. The property has never been used as Mr Christie intended to open it as a shop himself as and when finances allowed. When the rates demand was sent to him, Mr Christie sought to lease the premises but found that he was unable to do so as he did not possess legal title to the property. He said that Dublin Corporation was not in a position to transfer legal title until December, 1990.

Mr Christie said that he accepted the valuation placed on the property by Mr O'Flynn. He said that Superquinn had offered, in January, 1990, to lease the premises for £25,000 per annum.

Mr O'Flynn relied on his written submission but further commented on the change in the appellant's grounds of appeal since his appeal to the Commissioner. He referred to **Ebeltoft t/a Hunters Licensed Premises v. Commissioner of Valuation** which he said supported his contention that an appellant was not entitled to change his grounds of appeal.

In response to Mr O'Flynn, Mr Christie said that in addition to the offer of £25,000 per annum for a lease of the subject property from Superquinn Ltd, he had received an offer of £17,500 per annum for a lease from Suppliers Ltd., Ballyboggan Road.

Mr O'Keeffe of Dublin Corporation, Law Department, gave evidence in relation to the title of the subject property saying that the Department had been in communication with Mr Christie's solicitors over a long period and had many times sought completion of the contract and that Corporation files in relation to the matter show that any delay was on Mr Christie's part. In fact, as far as Dublin Corporation Law Department is concerned, title was always available to Mr Christie.

Mr Christie said that the problem in transferring title was due to the Development Section in Dublin Corporation and not because of any inefficiency on the part of the Law Department.

Mr O'Flynn submitted that the Valuation (Ireland) Act, 1852 does not take into consideration the appellant's point in relation to title and his inability to effect transfer of title does not have a bearing on net annual value as defined by S.11 of the 1852 Act. He said that the question of title to the property is a separate issue to that of rateable valuation and that the subject property is capable of beneficial occupation and of having a net annual value.

### **Findings**

In reaching its determination the Tribunal has taken into account the evidence given by the appellant that two tenants were found by the Estate Agents acting on his instructions, both of whom were willing to pay a market rent for a lease of the premises. Neither of these prospective tenants was deterred by any difficulties in relation to the title to the subject property, and the Tribunal is satisfied on the evidence before it that the question of title did not prevent the appellant from obtaining a suitable tenant. The Tribunal finds that the subject property was complete and capable of beneficial occupation at the relevant date and it therefore determines that the decision of the Commissioner should be upheld.