

Appeal No. VA95/2/006

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

John C. & Mary G. Mitchell

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: House and Surgery at Map Ref: 3,4,5,6,7B 12A/19, Chalfont Park, District of Malahide,
E.D. Malahide West, Co. Dublin
Quantum - Surgery in dwelling

B E F O R E
Fred Devlin

FRICS.ACI Arb. (Acting Chairman)

Con Guiney

Barrister

Barry Smyth

FRICS.FSCS

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF MAY, 1996

By Notice of Appeal dated the 27th May, 1995 the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £33.00 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "my practice of chiropody consists of approximately 4 hours a week, using my hall door with no change to the house. I am not recognised by the Department of Health thus not on the panel, my turnover is minimal, I'm only trying to make ends meet. This house is 95% a home".

The Property:

The property consists of a two storey semi-detached house in a residential area of Malahide. A single storey kitchen extension is constructed to rear. One ground floor room to front of approximately 108 square feet is used in connection with the chiropody practice with shared access with domestic.

Valuation History:

The house was first valued in 1974 revision at £28. In 1990 revision following a request to revise the valuation, as part of the premises was used for commercial purposes, the valuation was increased to £33 (£27 attributable to domestic and £6 on garage).

In 1993 revision following a complaint that the valuation was excessive the rateable valuation was unchanged at £33 but the domestic element was assessed at £30. There was no change made at First Appeal. It is against this decision of the Commissioner of Valuation that the appeal now lies to the Tribunal.

Written Submissions:

A written submission was received on the 19th March, 1996 from the appellants Mr. John C. Mitchell and Mrs. Mary G. Mitchell. In the written submission, the appellants outlined the description and location of the premises and gave their reasons for this appeal as follows:-

- (1) Service given to try and make ends meet and also because therapeutically it keeps mind and body together, and
- (2) If the rates remain high the only option left is to cease practising, as the income derived from chiropody would not justify continuing.

A written submission was received on the 4th March, 1996 from Mr. Malachy Oakes, District Valuer with over 20 years experience in the Valuation Office on behalf of the respondent. In his written submission, Mr. Oakes described the property and set out its valuation history as summarised above.

Commenting on the appellant's grounds of appeal, Mr. Oakes said that the chiropody practice was operating in one ground floor room in the house and that the valuation of £33 was not excessive, that it equates with a net annual value of £500 approximately or £10 per week.

Mr. Oakes set out his calculation of the rateable valuation on the subject property as follows:-

"Surgery	108ft ²	@	£5	=	£540	
R.V.		@	0.63%	=	£3.40	- Say £ 3.00
Add Domestic						<u>£30.00</u>
						<u>£33.00"</u>

Mr. Oakes also gave details of two comparisons which are summarised below:-

- (1) **Dr. McCurdy**, Lot 2 Carlisle Terrace.
House and Surgery. Rateable Valuation £56 (Domestic £32)

Surgery and Waiting Room: 385ft² @ £10

- (2) **Dr. Kearns**, Lot 10/3 Wendell Avenue, Portmarnock, Co. Dublin
House and Surgery. Rateable Valuation £45 (Domestic £31.50)

Surgery and Waiting Room: 473ft² @ £5.00

Oral Hearing:

At the oral hearing held in Dublin on the 22nd day of March, 1996 the appellants appeared and gave evidence on their own behalf whilst the respondent was represented by Mr. Malachy Oakes a District Valuer with the Valuation Office.

Before evidence was accepted from either party the Tribunal outlined to the parties that its function was limited to the determination of the proper rateable valuation of the hereditament in its entirety and not to apportion the valuation so determined as between domestic and non-domestic use. Both parties indicated that they understood this to be the situation and upon this basis the oral hearing proceeded.

At the outset Mr. and Mrs. Mitchell took the oath and with the consent of Mr. Oakes, Mr. Mitchell's written submission was adopted by him as his evidence in chief given under oath. Mr. Mitchell said that the professional organisation of which his wife was a member was not recognised by the Department of Health. As a consequence all of her patients were private and the number of appointments varied between 5 and 6 per week. Mr. Mitchell said that he was very methodical in keeping financial records and for the past year the total fee income was in the order of £550.

Mr. Mitchell said that the room used for his wife's chiropody practice was formerly the garage and handed to the Tribunal a photo of the subject property. In his opinion the comparisons relied upon by the respondent's valuer, that is, two doctor's surgeries, one in Portmarnock and one in Malahide were not truly comparable.

Mrs. Mitchell gave similar evidence to that of her husband and stressed the low level of fee income derived from the practice and the fact that her qualifications did not have official registration.

Mr. Oakes having taken the oath adopted his written submission as his evidence in chief given under oath. In oral evidence he said that the previous valuation was £28 of which £1 was attributable to the garage. In response to a question from the Tribunal, Mr. Oakes said that if the converted garage was used for solely domestic purposes the rateable valuation of the property in his opinion would be £30.

Determination:

The question to be determined in this appeal is the proper rateable valuation of the subject hereditament in accordance with the provisions of Section 11 of the Valuation (Ireland) Act 1852 as amended by Section 5 of the Valuation Act, 1986.

In his evidence in chief Mr. Oakes said that he had attributed a figure of £3 to the area used by Mrs. Mitchell in pursuit of her chiropody practice.

In response to a question from the Tribunal, Mr. Oakes said that if the area now used for the chiropody practice, that is, the former garage was in fact solely used for domestic purposes then the rateable valuation of the subject property would have been increased from £28 to £30 as against the present assessment of £33.

Having regard to the above and all the evidence and submissions adduced by the parties, the Tribunal has come to the conclusion that a hypothetical tenant in formulating an opinion of rental value for this hereditament would not make any allowance by way of increased rent to reflect the fact that a section of the property was used for chiropody practice purposes. In other words the rental value of the property in its present state and circumstances is no different from that which would apply if it were used solely for residential purposes.

The Tribunal therefore finds that the rateable valuation of the hereditament is £30 and determines accordingly.