

Appeal No. VA95/6/020

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

Meath County Council

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Warehouse at Map Ref: 5E/108 and 117, Ashbourne Industrial Estate, Townland:
Cookstown, ED: Kilbrew, RD: Dunshaughlin, Co. Meath
Notification of Revision under Section 3, 1988 Valuation Act

B E F O R E

Mary Devins - Solicitor

Deputy Chairman

Marie Connellan - Solicitor

Member

Barry Smyth - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF APRIL, 1997

By Notice of Appeal dated the 7th day of November 1995 the Appellant appealed against the determination of the Commissioner of Valuation in striking out the rateable valuation of £88 fixed at revision on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that:-

"Meath County Council complied with all statutory obligations regarding the notification of Caspark Site 108-117 Industrial Estate, Ashbourne of their property having been listed for revision on the 30th August 1993. All proofs necessary are available for inspection."

The Property:

The property consists of a terraced factory unit situated in the Ashbourne Industrial Estate. The factory comprises 7,215 sq.ft. with offices of 1,360 sq.ft.. The development cost approximately £160,000 in 1992.

Valuation History:

The property was revised in November 1994 and a valuation of £88 was placed on it. In December 1994 the Appellant appealed against the revised valuation and at first appeal the Commissioner of Valuation struck out the valuation of £88. It is against this determination of the Commissioner of Valuation that Meath County Council appealed to the Tribunal by way of a Notice of Appeal dated the 7th day of November 1995.

Written Submissions:

A written submission was received on the 11th day of November 1996 from M.A. Regan, McEntee & Partners, Solicitors on behalf of the Appellant, Meath County Council.

In the written submission it was indicated:

1. That the Appellant took issue with the Respondent's evidence in relation to the information on notification.
2. That in the submission of the Appellant the determination of the Appeal by the Respondent was in breach of natural justice and in particular the principle enshrined in the maxim "*Audi Alteram Partem*" in that it was determined without the Appellant being afforded an opportunity of making submissions in relation to the issue of notification.
3. That the Appellant had served notification by pre-paid registered post on the owner/occupier of the subject premises.
4. That the Appellant contended that the decision of the Tribunal in **VA90/3/074 - Trustees of Cork & Limerick Savings Bank v. Commissioner of Valuation** could be distinguished from the present case in that no record of notification or evidence of service was kept in that case.

A written submission was received on the 16th day of April 1996 from Mr. Des Doyle, B.Comm., a District Valuer with 25 years experience in the Valuation Office on behalf of the Respondent.

In his written submission, he described the subject premises and commented on the Appellant's grounds of appeal indicating that it was his understanding from a telephone conversation with Meath County Council that the occupier was not notified of the intention to revise because Meath County Council did not know the occupiers identity at the time. He said that rateable valuation was assessed at revision as follows:-

| | |
|---------|---|
| Offices | 1,369 sq.ft. @ £2.25 psf = £ 3,060 |
| Factory | 7,215 sq.ft. @ £2.00 psf = <u>£14,430</u> |
| Total | <u>£17,490</u> |
| | Say £17,500 |
| | RV @ 0.5% £88. |

A written submission was received on the 13th day of June 1996 from Patrick Tallan & Co., Solicitors on behalf of Caspark, occupier of the subject premises and a Notice Party to this appeal.

In the written submission, it was submitted that Caspark Manufacturing Company Limited was not given prior notice of Meath County Council's application to revise the valuation of the said premises and/or to include them in the Valuation Lists. In the circumstances the notice party contended that the revision was invalid. It was indicated that reliance would be placed on the provisions of *Sections 3(1) and 3(4)a of the Valuation Act 1988* in support of this submission. Reliance was also placed on the decision of the Tribunal in **VA90/3/074 - Trustees of Cork & Limerick Savings Bank v. Commissioner of Valuation.**

Oral Hearing:

At the oral hearing which took place in Dublin on the 11th day of November 1996 and was resumed on the 14th day of March 1997 the Appellant was represented by Mr. Rory McEntee of Messrs. M.A. Regan McEntee & Partners, Solicitors. Also present were Mr. John O'Grady and Ms. Esther Mulvihill both of Meath County Council.

Mr. Eamonn Marray, BL instructed by the Chief State Solicitor appeared on behalf of the Respondent. Also present was Mr. Des Doyle of the Valuation Office.

The Notice Party, Caspark Manufacturing Company Limited was represented by Mr. Charles Meenan, BL instructed by Messrs. Patrick Tallan & Company, Solicitors. Also present was Mr. Gerry Grattan, Managing Director of the said company.

Mr. O'Grady gave evidence that in his then capacity as Acting County Secretary of Meath County Council he had personally signed a letter dated the 30th August 1993 addressed to the occupier/notice party notifying it that its hereditament had been listed for revision.

Ms. Mulvihill in evidence stated that the letter of the 30th August was one of ten sent under cover of registered post to occupiers of premises all located on the Ashbourne Industrial Estate. She confirmed that enquiries made by her indicated that some at least of the other nine occupiers recollected receiving the letter of the 30th August 1993 and had so confirmed in writing. The relevant Certificate of Posting was produced to the Tribunal.

Ms. Mulvihill gave further evidence in relation to a telephone conversation she had with Mr. Doyle of the Valuation Office on or around 29th day of September 1995. She explained that at that time she had only recently been transferred to the Rating Section and was not entirely familiar with procedure and was certainly not familiar enough with Rating Law to give, as was alleged by Mr. Doyle, any interpretation of *Section 3 of the Valuation Act 1988*.

Ms. Mulvihill said that on hearing from Mr. Doyle that the occupier was alleging by way of first appeal that he had not been notified of revision, she asked Mr. Doyle to return to her a copy of the R2 Form which had originally been sent to the Valuation Office by Meath County Council with the request for revision. No copy of the R2 Form was returned to her, nor did she receive any subsequent communication of any kind from Mr. Doyle until the issuing of the decision of the Respondent on first appeal.

Mr. Doyle gave evidence of the telephone conversation with Ms. Mulvihill but was unable to confirm the date of same. He said that Ms. Mulvihill had told him that the question of notice would only arise if the identity of the occupier was known and that in this case it seemed that the identity of the occupier was not in fact known. Ms. Mulvihill did not have on file a copy of the relevant R2 Form and had asked him to send her back a copy of same. Mr. Doyle confirmed that he had not done so.

Mr. Grattan, Managing Director of Caspark Manufacturing Company Limited gave evidence that neither he nor any of the members of his staff who normally dealt with the post had any recollection or record of receiving the letter from Meath County Council notifying him of the

listing of his property for revision. In the course of cross-examination Mr. Grattan did concede that he may have been on holiday at the relevant date.

Submissions:

Mr. McEntee referred to his written submission of the 11th day of November and, by way of conclusion, said that the Appellant had discharged its onus of proof of service of the notification referred to in *Section 3(4)(a) of the Valuation Act 1988*.

He submitted further that the Respondent issued its decision on first appeal without first making sufficient enquiries from the Appellant or seeking details of the notice issued to the occupier.

Mr. Marray submitted that the Respondent had satisfied itself that the occupier had not been given notice in accordance with the requirements of *Section 3 of the Valuation Act 1988*.

Mr. Meenan in conclusion on behalf of the Notice Party referred to his written submission of the 10th day of June 1996 and contended that the Appellant had not proved actual notification and further that even if constructive notification were deemed to be sufficient that notification should have been in advance of the application for revision.

Findings:

The Tribunal finds that the evidence of the Appellant in relation to the letter of the 30th August 1993 is sufficient to prove notification within the meaning of *Section 3(4)(a) of the 1988 Act*.

No time limit is set out in Section 3(4)(a) and while it is reasonable to infer from the section that notification should be given within a reasonable time of the application for revision, it does not seem reasonable to expect such notification to be made in advance of the application. Any representation to be made by the occupier would be made to the Commissioner of Valuation and if, as in the instant case, the notification is given at such a time as to allow the occupier sufficient time within which to make any such representation then the Rating Authority has discharged its statutory function.

The Tribunal is satisfied that the Respondent did not make sufficient enquiries from the Appellant in relation to the question of notification and made its decision on first appeal on the basis of erroneous and/or insufficient information. In the circumstances the Tribunal allows the appeal and noting that the rateable valuation has been agreed by the parties determines that the correct rateable valuation of the subject hereditament is £88.