

Appeal No. VA96/3/059 to
VA96/3/061

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

Tuthills Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices (First Floor) and Supermarket at Map Ref: 1-3/C, 1-3/D and 1-3/AB Captain's Hill,
Townland: Leixlip, ED: Leixlip, RD: Celbridge I, Co. Kildare
Notification of Revision under Section 3, 1988 Valuation Act

B E F O R E

Mary Devins - Solicitor

Deputy Chairman

Brid Mimmagh - Solicitor

Member

Finian Brannigan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 1ST DAY OF JULY, 1997

By Notices of Appeal dated 31st July, 1996 the Appellant appealed against the determinations of the Commissioner of Valuation in fixing rateable valuations on the above described herediaments as follows:-

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|-----|------------------------------------|---|--------|
| (1) | VA96/3/059 (Offices at 1-3/C) | - | RV £18 |
| (2) | VA96/3/060 (Supermarket at 1-3/AB) | - | RV £90 |
| (3) | VA96/3/061 (Offices at 1-3/D) | - | RV £18 |

The grounds of appeal as set out in the Notices of Appeal are that the valuation revisions are invalid, inequitable and bad in law.

The Property:

The hereditament comprises a two storey premises located at Captain's Hill, Leixlip. Culpepper Limited an associated company owns the premises. Valuation was previously revised in 1982.

Written Submissions:

A written submission was received on the 14th May, 1997 from Mr. Patrick J. Nerney, Valuation Consultant on behalf of the Appellant. In his written submission, Mr. Nerney submitted that the requisite statutory notices were not served on the owner of the premises by Kildare County Council and that the revision as carried out in 1994/1 is invalid and in the circumstances the revised 1994/1 valuations should be struck out from the valuation list.

Mr. Nerney described the valuation history of relevance to the issue under appeal. He said that at 1982 revision the valuation was fixed at £70 under Map Ref: 1-3 Captain's Hill and description "shop and store (Gr. Floor)". At First Appeal the description was amended to "shop and store (1st Floor)" with the RV £70 unchanged. The other half of the first floor area occupied by Elizabeth Gibney was valued as "shop (1st Floor)" at £24 under Map Ref: In 1-3 Captain's Hill. He said that Kildare County Council served notice on the appellants in March, 1992 that a request to revise the valuation of their shop premises had been submitted by the Council to the Commissioner of Valuation. The result of the 1994/1 quarterly revision published in February, 1994 indicated that revision had not been confined to the portion of the property which had been referred to in the original notice. Tuthills were notified by the County Council that the valuation of their holding under Lot No. 1-3A Captain's Hill had been amended from £70 to £90. They were also notified that a revised valuation of £22 had been placed on a vacant first floor office under Lot No. 1-3D Captain's Hill. Notifications were not received in respect of Lot No's. 1-3B or C Captain's Hill which also resulted from the 1994/1 revision. These latter refer to a first floor office occupied by 'Irish Power and Process Limited' with an RV of £22 and a store with the 'Irish Times' as the indicated occupier with an RV of £8. He said that notices of first appeal were lodged on Tuthills behalf against the valuations of each of the four hereditaments on the grounds that they were excessive, inequitable and bad in law. Agreement was reached with the Appeal Valuer on quantum in each case without prejudice to the Appellant contesting the validity of the Revision.

A written submission was received on the 1st May, 1997 from Mr. Patrick Berkery, District Valuer with 20 years experience in the Valuation Office on behalf of the Respondent. In his written submission, Mr. Berkery included copies of letters of notification sent by Kildare County Council dated the 9th March, 1992 and 10th February, 1994. Mr. Berkery submitted that in his view the Valuation Act, 1988 did not specify whether the address or the lot number of the hereditament was to be used.

A written submission was received from Mr. M. Bermingham, County Finance Officer, Kildare County Council on the 9th June, 1997. Details of the posting of notices of appeal and of the names of the occupier to which they were addressed were provided in this written submission. In substance Kildare County Council argued that they were satisfied that the Appellant was adequately notified of the intention to list the properties occupied by Culpepper Limited for revision and of the Commissioner's decision in relation to same. It was stated that it was not standard practice to quote lot numbers on advising ratepayers that a revision of valuation had been requested by the Valuation Office. Copies of all the requisite letters of notification were also attached to the written submission.

Oral Hearing:

At the oral hearing which took place on the 19th day of May, 1997 and was resumed on the 19th day of June, 1997, the Appellant was represented by Mr. Patrick J. Nerney, Valuation Consultant and Mr. Patrick Berkery of the Valuation Office appeared on behalf of the Respondent.

Also present at the resumed hearing were Ms. Mary Dalton, Ms. Ann Dooley and Mr. Michael Bermingham, Assistant Staff Officers and Acting Finance Officer respectively with Kildare County Council and Mr. Reg Tuthill of the Appellant Company.

Mr. Nerney gave evidence that Culpepper Limited the Company related to the Appellant Company owned the entire subject premises and that in 1982 when the property was previously revised Tuthill's occupied the entire ground floor and one half of the first floor. He said that in 1992 Kildare County Council served Notice on the Appellants that the valuation of the premises had been submitted for revision by the Council to the Commissioner of Valuation. Mr. Nerney submitted that the initial notification of the request for revision did not comply with the relevant statute in that it did not refer to the two hereditaments in existence at the previous revision date in 1982.

Mr. Nerney further submitted that the notifications in relation to the result of the revision did not comply with the statutory requirements as set out in *Section 3(4)(a) and (b) of the Valuation Act, 1988* by reason of the fact that the owners and occupiers of the hereditaments were not notified in accordance with law and that therefore the revision was invalid.

Mr. Nerney called Mr. Reg Tuthill of the Appellant Company who gave evidence that he had received notice from Kildare County Council in relation to the request for revision of the subject property and that after revision he received two notices of the result, one in relation to the main shop premises and one in relation to the vacant unit. He stated that he had not received any notification in relation to the other two hereditaments.

Mr. Nerney referred the Tribunal to *Section 3 of the Valuation Act, 1988* and in particular to *subsections 3(4)(a) and 3(4)(b)* which read as follows:-

"Where an application under subsection (1) of this section in relation to any property is made by any person other than the owner or occupier of that property, the owner and occupier, if known, shall be notified by the rating authority of the application.

The owner and occupier, where known, shall be notified by the rating authority of the determination of the application and of his right to appeal in accordance with sections 19 and 31 of the Act of 1852 against the valuation determined by the Commissioner of Valuation and shall also be notified by the rating authority of the outcome of that appeal."

He submitted that the requirement in this subsection is mandatory, that in the instant case it was not complied with and as a result that the revised valuation should be considered null and void. In support of his submission he referred the Tribunal to the judgement of Mr. Justice McWilliam on 27th January, 1984 in the case of *The State (Commissioner of Valuation) v. His Honour Judge O'Malley 1982 No. 414SS*.

Mr. Berkery gave evidence that the revising valuer had inspected the premises on foot of a request from Kildare County Council dated 9th May, 1992 to re-value the premises on the grounds that the "property is subdivided in a different manner to situation at last revision". He said that it appeared that lot 1-3/B was described by the said revising valuer as being in the occupation of the Irish Times apparently because this hereditament which comprised a store to which he could not gain access, had affixed on or near to it a sign with the name of the Irish Times on it.

Ms. Mary Dalton and Ms. Ann Dooley gave evidence that when the subject property was listed for revision in March, 1992 a notification of the request was served on Culpepper Limited. They accepted that the lot numbers were incorrectly described on the said notification but gave evidence that it was not the practice of Kildare County Council to quote lot reference numbers on such notifications. Ms. Dalton gave further evidence that while four notifications were issued by registered post in relation to each of the hereditaments only one, namely that relating to the Irish Times was returned. She said further that a representative from the Appellant Company had in fact rung Kildare County Council in relation to the notice referring to the Irish Times and that this representative had indicated that the revised valuations were to be appealed.

Mr. Berkery submitted that while the reference to lot numbers and the original notification of request for revision may have been incorrect, nonetheless the owners and occupiers were notified of such request. He further submitted that in view of the fact that appeals were lodged in relation to all of the hereditaments no owner or occupier had been adversely affected.

Determination:

Once the issue of notification has been raised the Respondent must discharge the resulting onus of proof.

The Tribunal accepts that the owners and occupiers were notified of the request for revision dated 9th May, 1992. This notice was served on Culpepper Limited which is a related company to Tuthill's Limited, the Appellant herein. The description of the lot number does not affect the validity of service, this, particularly in view of the fact that the grounds for revision are specifically referred to in the Notice and relate to the subdivision of the property.

In deciding whether or not the rating authority in this case discharged its obligations under *subsection 3(4)(b) of the Valuation Act, 1988* the Tribunal has had regard *inter alia* to the spirit and intent of the subsection which is to prevent the owner and occupier of property from being prejudiced by non-notification and to afford such owner and occupier the right to appeal the Commissioner's decision. The Appellant Company was obviously, in this case, not so prejudiced.

Further, if the subsections 3(4)(a) and (b) are mandatory in nature it seems to the Tribunal that Kildare County Council carried out its statutory obligation in a reasonable manner,

taking into account the report of the revising valuer even though the latter may, in hindsight, be somewhat bizarre in relation to the portion of the premises purportedly occupied by the Irish Times. Any defect, however, in relation to the latter would seem to have been cured and the Tribunal is satisfied that there has been sufficient compliance in this case with *Section 3(4)(a) and (b) of the Valuation Act, 1988*.

Accordingly, therefore, the Tribunal affirms the decision of the Respondent.