Appeal No. VA98/2/053

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Sord Data Systems Ltd.
APPELLANT

and

Commissioner of Valuation
RESPONDENT

RE: Office and Warehouse at Map Reference 1a/82/1 (Furze Court/Furze Road), Sandyford Industrial Estate, Townland: Murphystown, E.D. Dundrum, Dundrum Balally, Co. Dublin
Notification of Revision under Section 3, 1988 Valuation Act

B E F O R E

Con Guiney - Barrister at Law	**Deputy Chairman**
Ann Hargaden - FRICS.FSCS	**Member**
Finian Brannigan - Solicitor	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF JUNE, 1999

By notice of appeal dated the 29th April 1998, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £75 on the above described hereditament, The grounds of appeal as set out in the notice of appeal were that the valuation was inequitable and bad in law. The appellants were not served with any pre-revision notification in relation to this property in accordance with section 3, 4(a) of the 1988 Act. On this basis appellant seeks to have the valuation struck out.

The appeal proceeded by way of an oral hearing that took place in the Tribunal Offices in Dublin on 2nd December 1998. Mr. Eamon Halpin, B.Sc. (Surveying), A.S.C.S., A.R.I.C.S., M.I.A.V.I., of Eamon Halpin & Co., Chartered Valuation Surveyors & Estate Agents represented the appellant. Mr. Peter Walsh, Appeal Valuer, represented the respondent. The Notice Party, Dunlaoghaire–Rathdown County Council, was represented by Ms. Dorothy Kennedy, Solicitor, together with Ms.Vera Murtagh Staff Officer with the Council.

Valuation History

The relevant valuation history is that the subject hereditament was first valued in October 1996 as part of the 1996 revision programme. It was initially valued at RV £85 but this was reduced on appeal to RV £75. The property is described as an Office/Warehouse.

For the purposes of the appeal before this Tribunal, quantum has been agreed. The only issue to be decided is whether the appellant had been served with proper pre-revision notice pursuant to Section 3(4)(a) of the Valuation Act 1988.

A written submission prepared by Mr. Eamonn Halpin on behalf of the appellant was received by the Tribunal on 19th November 1998.

A written submission prepared by Mr. Peter Walsh, on behalf of the respondent was received by the Tribunal on 18th November, 1998.

A written submission prepared by Ms. Dorothy Kennedy, Solicitor, Law Agent's Office, Dun Laoghaire Rathdown County Council, on behalf of the Council as notice party was received by the Tribunal on 18th November, 1998.

Mr. Halpin gave sworn testimony on behalf of the appellant and Mr. Walsh gave sworn testimony on behalf of the respondent. Ms. Kennedy made legal submissions on behalf of the notice party and as agent for the respondent.

The following relevant facts either agreed or so found, which emerged during the course of the hearing are;-

(a) The appellant was informed at its correct address as to the revision of valuation of a property that was about half a mile distant from the subject hereditament in the Stillorgan Industrial Park. Specifically the revision notice contained the rate account number, map reference, property location, and property description of this particular property. The only items that could be connected with the subject hereditament on the revision notice were the townland and the D.E.D./Ward.

(b) The appellant's landlord was notified at its correct address (which was different to that of the appellant) with a revision notice which correctly identified the subject hereditament.

(c) The notice to the appellant and the appellant's landlord were both dated 26th September, 1996.

In support of his contention that the appellant had not been properly notified in accordance with Section 3(4)(a) of the Valuation Act 1988, Mr. Halpin cited the following decisions of the Tribunal – ***Trustees of Cork & Limerick Savings Bank-v-Commissioner of Valuation (VA90/3/097)***, which decided that if the revision notice is not served then the revision is invalid.

Mr. Halpin referred to ***Brendan M. Forde-v-Commissioner of Valuation(VA97/2/033)***, and ***Cuddy McCarthy-v-Commissioner of Valuation (VA97/2/032 and VA97/2/030)*** and said that these decisions dealt with the procedure and details of the notification process under the Valuation Act 1988.

Mr. Halpin referred to ***John Pettitt & Son Limited-v-Commissioner of Valuation (VA95/5/015)***, which decided that compliance with Section 3(4)(a) of the Valuation Act 1988 was mandatory.

Mr. Halpin referred to ***Kerry Foods-v-Commissioner of Valuation (VA96/3/010)*** and said it was similar to the case now before the Tribunal. There the appellant's property

had not been correctly identified as to lot number in the revision notice. However, the property to be revised was the only factory in the townland and was easily identified. Accordingly the Tribunal in that case decided there had been sufficient compliance with Section 3(4)(a) of the Valuation Act 1988. In the case now before the Tribunal there are two adjoining industrial estates with many units. The subject hereditament is located in one of these industrial estates and the hereditament shown incorrectly in the revision notice was located in the adjoining industrial estate.

Mr. Halpin also cited ***Murnane Nolan & Company-v-Commissioner of Valuation (VA97/3/001)*** and said that this decision was linked to the other decisions that Mr. Halpin had already cited on the general criteria for notification under the Valuation Act 1988.

Mr. Halpin dealt with the issue of prejudice to the appellant. Representations could have been made on foot of the notice that the appellant received resulting in no valuation being placed on the subject hereditament. This would be on the grounds that the wrong property had been listed.

Ms. Kennedy in her submissions said that the revision notice had been sent to the appellant at his correct address. She accepted that there had been a clerical error in the contents of the notice.

Ms. Kennedy referred to ***Blueflite Logistics-v-Commissioner of Valuation (VA95/1/030 & 031).*** In that case she said, the Notice sent by the local authority had given the appellant the opportunity to make representations to the Commissioner of Valuation which the Tribunal stated in the Blueflite Logistics case was the purpose of Section 3(4)(a) of the Valuation Act 1988. Accordingly she submitted that the appellant in this case had not been prejudiced as it had received a letter of notification from the local authority.

Ms. Kennedy referred to ***Sheen Falls Estate Limited-v-Commissioner of Valuation (VA92/6/119),*** where a carbon of the revision notice and the post book were retained and this set up a presumption of notification. Additionally, no issue had been made ultimately about incorrect lot numbers.

Again Ms. Kennedy referred to ***John Pettitt & Son Limited-v-Commissioner of Valuation (VA95/5/015).*** In the revision notice in that case an incorrrect reference to a lot number together with no other description of the property was held not to invalidate the revision notice. Ms Kennedy seems to have been referring to a 1992 revision mentioned in that case.

In the ***Kerry Foods-v-Commissioner of Valuation (VA96/3/010)*** case, the lot number of the hereditament was incorrect. The Tribunal accepted that a clerical error did not invalidate the revision notice.

Ms. Kennedy referred to ***A.I.B. Investment Managers Limited-v-Commissioner of Valuation (VA94/3/006)***. In that case the appellant had not been notified of the revision. This was due to the fact that the rating authority had not made inquiries about the occupier because it relied on a system whereby it was normally notified by vendors of a change of occupation. Under this system the rating authority, where it was not so notified, did not make any inquiries unless the notice was returned. The Tribunal decided that a reasonable system of notification had been used. In this case Ms. Kennedy said reasonable steps had been taken to notify the occupier.

Ms Kennedy referred to ***Tuthills Limited-v-Commissioner of Valuation (VA96/3/059 – 061)***, in which case the lot number was in error. The Tribunal decided that this did not invalidate the revision as the grounds of revision were specifically referred to in the revision notice. In the instant case the standard format letter sent to the appellant sets out the fact of revision.

Finally Ms. Kennedy referred to the ***Murnane Nolan & Company*** case mentioned by Mr. Halpin. She said that it should be distinguished from the present appeal as in that case the occupier had been resident for more than five years in a particular unit. The revision notice had been addressed to the "occupier of the unit". There were three occupiers in the unit. It was held that there was invalid notice given the long occupation in time of the appellant.

Findings and Determination

The Tribunal has considered the evidence offered by the appellant and the respondent and the submissions made by the appellant and the submissions made on behalf of the notice party and the respondent.

In the case of ***John Pettitt & Son Limited-v-Commissioner of Valuation (VA95/5/015)***, the Tribunal reviewed a number of its decisions in connection with Section 3(4)(a) of the Valuation Act 1988 and derived a number of general principles. It should be noted that for the purposes of the determination of this case that it is the application of the general principles to a 1994 revision in the ***John Pettitt & Son Limited*** Case that is relevant.

Two principles derived from the ***John Pettitt*** case and applicable here are that notification to the occupier under Section 3(4)(a) of the Valuation Act 1988 is mandatory and every owner/occupier suffers prejudice consequent on a notice of revision. The prejudice is that immediately upon his property being revised he is potentially liable for the rate placed thereon.

In this case the Tribunal finds that the appellant was notified of the revision of a property other than his own. The only two items on the revision notice that could refer to the occupier's property, namely the townland and the D.E.D/Ward, also referred to the property described in the revision notice and therefore could not serve to identify the appellant's property in the revision notice.

Notice under Section 3(4)(a) of the Valuation Act 1988 concerns, in this case, an application under Section 3(1) of the Valuation Act 1988 for the revision of the valuation of the appellant's "property". Property as defined by the Valuation Act 1988 means any rateable hereditament.

As to the issue of a clerical error not invalidating the revision notice, which Ms. Kennedy sought to support by citing the ***Kerry Foods*** case, the Tribunal considers that that case can be distinguished from the instant appeal in that in the former case the subject hereditament was the only factory in its townland and could be easily identified, whereas in the present case the subject was located in one industrial estate

ands the property erroneously referred to in the revision notice was located in an adjoining industrial estate. Furthermore there were many units in both industrial estates.

The Tribunal therefore finds that the appellant was not notified in accordance with Section 3(4)(a) of the Valuation Act 1988 and was prejudiced thereby.

The Tribunal therefore strikes out the October 1996 revision of the subject hereditament.