

Appeal No. VA15/1/012

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Ashford Studios

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to whether an Exemption from Rating applies to:

Property No. 635845, Studio at Ashford Studios, Ballyhenry, Killiskey, Rathdrum, County Wicklow.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 27TH DAY OF MARCH, 2017

Sasha Gaver – Senior Counsel

Chairperson

Aidan McNulty – Solicitor

Member

Carol O’Farrell – BL

Member

1. THE NOTICE OF APPEAL:

1.1 By Notice of Appeal dated the 9th day of February, 2015, the Appellant appealed against the determination of the Respondent pursuant to which the relevant Property was deemed rateable and a Certificate with a valuation of RV €1,740 was issued.

1.2 The Grounds of Appeal as set out in the Notice of Appeal are that the valuation of the Property is incorrect because:

“(i) The rated property does not make a commercial return but does greatly contribute to the Government’s employment and economic and growth targets through inward investment. Due to the unfamiliar circumstances of this project, discussion with government is ongoing to decide a more suitable rating scheme.

*(ii) With regard to the Valuation which the Appellant considers ought to have been determined as being the valuation of the property concerned it is stated:
A waiver in valuation until negotiations with government have concluded.
Please see attached document for more details.”*

2. THE HEARING:

2.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Third Floor, Holbrook House, Holles Street, Dublin 2, on the 27th day of July 2015. At the hearing the Appellant was represented by the CEO of Ashford Studios, Mr. Joe O’Connell. Robert D. O’Neill B.L., instructed by Michael Collins of the Chief State Solicitor’s Office appeared on behalf of the Respondent, along with David O’Brien MSc Surveying, Bachelor of Business Studies, a valuer in the Respondent’s office.

2.2 The Respondent’s representatives confirmed that they took no issue with Mr. O’Connell personally representing the Appellant company and, accordingly, the Tribunal allowed the matter to proceed on that basis.

3. THE PROPERTY:

3.1 The Property is a large industrial building (11,766.56 m²), which is used as a film studio, and comprises a main building, warehouse and ancillary workshops. The main building comprises offices on three floors at the front while offices at the side are two storeys high. The three storey offices at the south of the building house the main production offices on the ground floor, restaurant on the first floor, while the boardroom and executive offices are on the third floor. There is a two storey height atrium at the entrance and each floor

has full height glass walls on three sides. There are suspended ceilings and recessed lighting also. On the fourth floor there is mezzanine storage and it leads to the plant room by way of an access corridor.

- 3.2 The two storey offices to the west are home to the makeup department on the ground floor with dressing rooms for the actors on the first floor. There is a central corridor that leads to the offices on the eastern side of the building. Both floors are used as an art workshop. The warehouse element of the building is divided into three soundproof film studios with a clear working eaves height of eleven metres. The ancillary workshops are external to the main building and warehouse, with one located at the entrance to the site and the other located north of main stage 1.

4. THE RELEVANT LEGISLATIVE PROVISIONS:

- 4.1 Section 15 of the 2001 Act provides:-

“(1) Subject to the following subsections and Sections 16 and 59, Relevant Property shall not be rateable.

(2) Subject to Sections 16 and 59, Relevant Property referred to in Schedule 4 shall not be rateable. ...”

- 4.2 Subsection (3) goes on to provide that a building, or part of a building, land, or a waterway or harbour directly occupied by the State shall not be rateable. Subsection (4) provides that a fishery in respect of which a rate has been struck in accordance with particular legislation, shall not be rateable.

- 4.3 Section 16, as referred to above, is concerned with the time from which Relevant Properties shall or shall not be rateable.

- 4.4 Section 59 deals with the rateability of certain mines, rights to drill and the circumstances under which an apartment might be rateable.

4.5 Schedule 3 sets out many categories of property which come within the meaning of “relevant property” for the purposes of the Act, and Schedule 4 of the Act sets out a number of categories of relevant property which are exempt from being rated, including, for example, farm buildings, domestic premises, an art gallery, museum, library, park or national monument.

5. THE APPELLANT’S EVIDENCE AND SUBMISSIONS:

5.1 Mr. O’Connell described the development of the Subject Property, which had taken some seven years to construct. Apparently, Mr. O’Connell was a businessman who had previously been involved with manufacturing products in China. His business had operated a large premises in Rathcoole as a warehouse, but, he had decided to move to Ashford and applied for planning permission for a warehouse, on the site of the Subject Property. By the time this planning permission was granted, Mr. O’Connell’s business was no longer in need of such a warehouse and he decided to construct a film/TV production studio. The completed building was completely different to a warehouse.

5.2 The plan for the Subject Property was based on Pinewood Studios in the UK, which has some twenty-one sound stages. The studio was opened in 2012 and had from the outset been involved in the production of a prestigious and expensive television series. The studio was, at the time of the Appeal, trying to attract large budget films from, *inter alia*, Hollywood.

5.3 Mr. O’Connell gave evidence that the realisation of a building of this nature required a large capital investment because, *inter alia*, a significant level of infrastructure was required to attract movies and high profile television productions. However, this large capital investment generated a minimal return per square foot in comparison with other industries. Furthermore, the film production industry, by its nature, was cyclical and, therefore, the facility was empty for parts of the year, unlike other industries where business is continuous. Mr. O’Connell also described the industry as transient because there is no commitment from film or television producers or a guarantee of occupation from production companies.

- 5.4 Mr. O’Connell stated that as the Subject Property is purpose built for film and television production, he is unable to use the building for any alternative purpose and as a result the Appellant cannot generate a return similar to alternate businesses or industries that might be operated from such a large industrial building. Mr. O’Connell stated that he had been in negotiations with Wicklow County Council in respect of the planning and development levies payable by the studios and the Local Authority had agreed to re-categorise the Subject Property for that purpose.
- 5.5 In the letter of the 9th of February, 2015 which was appended to the Notice of Appeal, referred to above, Mr. O’Connell stated that the Appellant had ventured into the project knowing that the stages, workshops and office infrastructure needed to produce quality TV and video content, were unsustainable as a single entity. This was evident in the fact that nobody had built a studio in forty years due to the large capital investment needed and the minimal return generated. The letter states that as the rated property is not making a commercial return, it should not be rated as a commercial property. It also states that in October, 2011 the studio requested the rates valuation be “waivered” until conclusions had been reached. This, he describes as a logical strategy to what is “*an exceptional case*” apparent by the non-existence of a category in the ratings scheme for studio infrastructure to fall under. Nevertheless, he goes on to say that the studio was valued and has been in the Appeals process since 2013.
- 5.6 The various areas of the Subject Property were valued on the following basis: offices – €41.00 psm; warehouse (studio 11m-15m eaves) – €30.75 psm; remaining warehouse – €23.91 psm; mezzanine store – €17.08 psm; external workshops – €20.50 psm; and external mezzanine stores – €6.83 psm.
- 5.7 With regard to the Comparator Properties relied upon by the Respondent, Mr. O’Connell referred to Comparison No. 2, which is located at Kilcoole Industrial Estate, Kilcoole, Co. Wicklow. This property comprises of a warehouse and offices, but, Mr. O’Connell pointed out that the turnover of the business operated in that property is multiples of the Appellant’s turnover. Mr. O’Connell argued that the Appellant’s turnover was thirteen times less than the turnover per square foot of Comparison No. 2.
- 5.8 In addition, Mr. O’Connell pointed out the much higher footfall of people involved in the operation of a film studio, which he argued increased the wear and tear costs of the

Subject Property – in relation to the Comparison cited by the Respondent. Furthermore, in Mr. O’Connell’s submission the initial capital cost required to provide the facility needed for the film industry was significantly greater than that required in industrial buildings such as the comparison relied on by the Respondent.

5.9 Mr. O’Connell maintained that the Subject Property was not comparable to the Comparison Properties utilised by the Respondent and, because of the uniqueness of the film industry, urged the Tribunal to find that the Subject Property should qualify for an exemption of rates in the same manner as agricultural infrastructure does.

6. THE RESPONDENT’S EVIDENCE AND SUBMISSION:

6.1 Mr. O’Brien, from the Respondent’s office, confirmed that the Respondent had no doubt that the Subject Property had to be considered as relevant property as per Schedule 3 of the 2001 Act. The Subject Property did not come under any exemption provided by any paragraph of Schedule 4 of the said Act. In this regard, Mr. O’Brien relied upon, *inter alia*, the fact that another well-known film studio, Ardmore Studios, was rated and had always been rated since initially valued in 1979. Therefore, Mr. O’Brien argued that there was no basis for a contention that a film studio, by definition, is not a rateable property.

6.2 With regard to the comparisons cited by him, Mr. O’Brien outlined how they were, given their size and the inherent nature of the building, comparable to the Subject Property.

6.3 In his Legal Submissions, Mr. O’Neill B.L. said that the Appellant had not made out a stateable case for exemption and the Subject Property had originally been developed as a warehouse with offices and was still eminently useable as same. Mr. O’Neill stated that Schedule 3 of the 2001 Act sets out what is meant by “*relevant property*”, being, *inter alia*, (a) buildings; (b) lands used or developed for any purpose (irrespective of whether such lands are surfaced); and any construction affixed thereto which pertain to that use or development. In respect of Schedule 4, Mr. O’Neill argued that the Subject Property simply did not come within any of the exemptions therein provided. While farm buildings were exempt, the Subject Property was clearly not a farm building. Further,

infrastructure is not a category of building exempted pursuant to section 15 (2) and Schedule 4.

- 6.4 Mr. O'Neill relied on, *inter alia*, the decision of the High Court in *Nangles Nurseries v. Commissioners of Valuation* [sic] [2008] IEHC 73, in which Mr. Justice McMenamin stated that the 2001 Act is, similar to a taxation or penal statute, to be strictly interpreted. Accordingly, any exemption sought to be relied upon by a ratepayer is to be strictly interpreted against the ratepayer.
- 6.5 Mr. O'Neill noted that the grounds of Appeal advanced by the Appellant were confined to the assertion that the Subject Property is not rateable. In the circumstances, Mr. O'Neill B.L. urged the Tribunal that it was not now open to the Appellant to also argue that the valuation of the Subject Property had been incorrectly assessed, if the Tribunal was to ultimately hold that the Subject Property was rateable.
- 6.6 At the conclusion of the oral evidence, the Tribunal requested the Respondent to furnish it with additional information concerning the four Comparator Properties relied upon by the Respondent. This was furnished under cover of letter dated the 28th of July, 2015. Comparison 1 is a pharmaceutical factory with offices, warehouses and specialised clean rooms, almost twice the size of the Subject Property at 22,757 sqm which is situate on the outskirts of Arklow. Here the offices were valued at €54.67 psm, the factory at €34.17 psm and the warehouse at €23.91 psm.
- 6.7 Comparison 2, which was referred to by Mr. O'Connell in his evidence, is a much smaller property than the Subject Property at 5,985.49 sqm. It is also located in an industrial estate on an overall basis valued at €33.33 sqm, whereas the Subject Property is valued on an overall basis at €29.68 sqm.
- 6.8 Comparison 3 comprises of offices, an old workshop and a warehouse measuring 13,367 sqm and is located in the industrial estate in Kilcoole, County Wicklow.
- 6.9 Comparison 4 is a property comprised of a warehouse, workshop and a yard at 6,081.69 sqm. This is located off the M11 at Junction 18.

7. THE PRINCIPLES TO BE APPLIED BY THE TRIBUNAL:

7.1 As was set out by Mr. Justice McMenamin in his Judgment in *Nangles Nurseries v. Commissioners of Valuation* [2008] IEHC 73. The 2001 Act, as a rating statute, is to be strictly interpreted and is subject to the same general principles of interpretation as a taxation or penal statute. With regard to the general principles of interpretation of a taxation or penal statute, Mr. Justice McMenamin referred to *The Revenue Commissioners v. Doorly* [1933] IR 750 where Kennedy C.J. observed:

“The duty of the Court, is ... to examine the text of the Taxing Act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms, on the alleged subject of taxation, for no person or property is to be subjected to a taxation unless brought within the letter of the Taxing Statute. ... Now the exemption of tax, with which we are immediately concerned is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given in express and in clear and unambiguous terms, within the letter of the Statute as interpreted with the assistance of the ordinary canons for the interpretation of Statutes, [...] The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the Statute, clearly and without doubt and in express terms, accepts for some good reason from the burden of a tax thereby imposed generally on that description of subject matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the Taxing Act as interpreted by the established canons of construction so far as applicable.”

8. FINDINGS:

The Tribunal, having examined the particulars of the Subject Property, its valuation history and having considered the evidence adduced and the submissions made by the parties, makes the following findings:

- (i) The onus is on the Appellant to satisfy the Tribunal that the Subject Property comes within one of the categories of property exempt from rates pursuant to section 15 (2) and Schedule 4 of the 2001 Act.

- (ii) The Subject Property is a “relevant property” for the purposes of the 2001 Act and the Tribunal is satisfied that it does not come within any of the exemptions set out in Schedule 4 of the said Act. Accordingly, there is no basis upon which to determine that the Subject Property ought not be rated by the Respondent. The Tribunal undoubtedly has sympathy for the Appellant, given the nature of the operation at the Subject Property and is mindful of the benefit to the local community, and indeed to that part of the country, which the operation of the studios brings. However, the Tribunal is a body created by Statute and is clearly confined to exercise its powers in accordance with the terms of the Statute which created it. Barring an amendment to the legislation which sets out which relevant properties may be exempted from rating, the Appellant is obliged to discharge its rates bills, unless, it can obtain a waiver in respect of same from the Local Authority to whom the rates are owed.
- (iii) While, the Appellant’s Grounds of Appeal were confined to asserting that the Property was exempt from rates, the Tribunal is mindful of the fact that the Appellant represented itself and did not have the benefit of an expert in rating or property valuation to assist it for the purposes of this Appeal. The Tribunal is an expert body to which the principle of curial deference applies (as confirmed by *Mara v. Hummingbird Limited* [1982] ILRM 421; *Henry Denny & Son (Ireland) Limited v. The Minister for Social Welfare* [1998] 1 IR 34; *Premier Periclase Limited v. Commissioner of Valuation*, the High Court, unreported, 24th of June, 1999, Kelly J.).
- (iv) The Tribunal is satisfied that the Subject Property is comparable with the industrial properties relied upon as Comparisons by the Respondent and that it lends itself to valuation by comparison with the tone of the list for such properties. However, having looked at the details relating to each of the four comparisons, the Tribunal notes that the Subject Property is not situate in an industrial location but is in a somewhat isolated location away from established industrial locations. Nor, is it close to major population centres. Accordingly, the Tribunal is satisfied that the rateable valuation of the Subject Property should be adjusted downwards to reflect this.

9. DETERMINATION:

The Tribunal is satisfied that the NAV of the Subject Property of €349,214.30 should in the circumstances be reduced by 5% as follows:-

$$€349,204.30 - €17,460.715 = €331,743.585$$

$$\text{Total NAV } €331,743.585 \times 0.5\% = €1,658.71$$

Say €1,655

And the Tribunal so determines.