

Appeal No. VA15/5/019

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

**Thomas Healy**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In Relation to the Issue of Quantum of Valuation in Respect of:**

Property No. 2203095, Retail (Warehouse) at 5 Eastpoint Retail Park, Limerick, County Limerick.

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 28<sup>TH</sup> DAY OF MARCH, 2017**

BEFORE:

**Majella Twomey – BL**

**Deputy Chairperson**

**Carol O'Farrell - BL**

**Member**

**Hugh Markey - FRICS, FSCSI**

**Member**

**Background**

1. By Notice of Appeal received on the 10<sup>th</sup> day of September, 2015 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual value of €57,700 on the above described relevant property No. 2203095 on the ground as set out in the Notice of Appeal as follows:

*“The property is incapable of beneficial occupation and should be excluded from the Valuation List.”*

2. The Appeal commenced by way of an oral hearing in the offices of the Valuation Tribunal, 3<sup>rd</sup> Floor, Holbrook House, Holles Street, Dublin 2 on the 29<sup>th</sup> June 2016 and resumed on the 16<sup>th</sup> November 2016. Mr. Proinsias Ó Maolchalain BL instructed by Holmes O'Malley Sexton Solicitors appeared on behalf of the Appellant with Mr. David Molony BSc MA and Mr. Val O' Brien BSc. (Hons) MSCSI MRICS Dip Proj. Man. and Mr. Robert O'Neill BL instructed by the Chief State Solicitor appeared on behalf of the Respondent with Mr. Dean Robinson MSCSI MRICS, ACI Arb.

### **The Ground of Appeal and the Law:**

3. The question for the Tribunal, in this case, is whether the unit, the subject matter of this appeal is incapable of 'beneficial occupation'?
4. The case of **Telecom Éireann v Commissioner of Valuation [1994] 1 IR 66**, states that the essential ingredients for rateable occupation are "*the occupation must be exclusive, it must be of benefit to the occupier and it must not be transient*".
5. Section 48 (3) of the Valuation Act 2001 provides (subject to section 50) for the purposes of the Act of 2001 that "*net annual value*" means, in relation to a property, *the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year...*". [Emphasis added].
6. The Respondent is obliged by section 13 of the Act of 2001 to provide for the determination of the value of all relevant properties other than relevant properties specified in Schedule 4 of the Act. Under section 15 all relevant property is rateable except for the relevant properties specified in Schedule 4. Properties that fall within any of the categories listed in paragraph 1 of Schedule 3 of the Act of 2001 and comply with the condition referred to in paragraph 2 of that Schedule are relevant and rateable properties. The condition mentioned in paragraph 2 of Schedule 3 is that the property concerned
  - (a) is occupied and the nature of that occupation is such as to constitute rateable occupation of the property, that is to say, occupation of the nature

which, under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was a prerequisite for the making of a rate in respect of occupied property, or (b) is unoccupied but capable of being the subject of rateable occupation by the owner of the property.

7. In order for a property to be deemed incapable of beneficial occupation, the Appellant must prove on the balance of probabilities that the property is of no use to any party or is 'struck with sterility in any and everybody's hands'. Per *London County Council v Erith Churchwardens [1893] AC 562*, *Fabian Doyle v Commissioner of Valuation VA 14/2/001*, *Oakbell Ltd v Commissioner for Valuation VA 14/5/149*.
8. The revaluation date for the subject property is the 1<sup>st</sup> of March 2012.
9. The Tribunal notes that the the subject property is currently up for sale/let by private treaty with property consultants, GVA O Buachalla.

### **The Appellant's Submissions**

10. Counsel for the Appellant stated that the occupation of the subject property would not be of benefit to anyone in their present state.
11. Counsel referred to *Harper Stores v Commissioner of Valuation [1968] IR 166*, where Henchy J explained the rule of *rebus sic stantibus*.
12. It was submitted that the principles in *Bord Gais v Commissioner for Valuation VA96/4/07*, a case dealing with the rateability of disused tanks, also applied to this case.
13. It was submitted that the Tribunal should only deal with the physical circumstances of the property and that there was a difference between minor works and non-minor works which a hypothetical tenant could not be expected to finance.

14. It was submitted that the subject property was rebuilt in 2011 and has not been occupied since then.

### **The Respondent's Submissions**

15. Counsel for the Respondent said that the only issue for consideration was whether the property was capable of beneficial occupation.
16. He referred to the case of *Oakbell Ltd v Commissioner of Valuation, VA14/5/149* , which sets out the principles applicable to beneficial occupation.
17. It was submitted that the Appellant has failed to show that the property is not of use to any hypothetical tenant.
18. It was submitted that the outcome in *Bord Gais v Commissioner for Valuation VA96/4/07*, related to a special set of circumstances and that one had to show that no Tenant would rent the property in order to come within this dicta.
19. It was submitted that the subject property has been tenanted at some point. The property was bought by the Appellant and is on the market for let and sale. It was further submitted that the Appellant is claiming a rebate on the rates on the grounds that the property is vacant and available to let. It was stated that, when this is taken into account, that it could not be argued that the Unitis '*sterile in any and everybody's hands*'.
20. Counsel said there was a very high standard for excluding a relevant property from the valuation list and that if such a property were to be excluded that it must be of no beneficial value.
21. Counsel referred to Butler on Rating Law in Ireland, para 2.07, which cites *Sinnott v Neale (1948) Ir. Jur. Rep. 10* in relation to the point that it is not necessary to show pecuniary profit in order for something to be in rateable occupation.

## **Findings and Conclusions**

22. The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed the valuation history; having examined and considered the written evidence and having heard the oral evidence on the 29<sup>th</sup> June 2016 and the 2<sup>nd</sup> November 2016, adduced before us, by Mr. O'Brien and Mr. Moloney Valuer, on behalf of the Appellant, who contended for a net annual value of nil, and Mr. Robinson, on behalf of the Respondent, and having considered the legal submissions finds as follows:
23. Mr O. Brien, for the Appellant, described the subject property as a large warehouse which had been damaged by fire. He said it was a shell with no electrical services, lights or sockets. He said there was no provision for water or plumbing. He confirmed having first inspected the property on 6<sup>th</sup> October 2014.
24. Mr. O Brien said there was no form of heating or any fire alarms or emergency exits. He states that there were no emergency lights but that the shell was of 'a good standard'. He also stated that new screed was needed for the floor.
25. Mr. Moloney, also for the Appellant, said that the subject property had been destroyed by a fire in 2009, but that it had been completely re-built.
26. Mr. Robinson, for the Respondent confirmed that the subject property had been re-built after the fire and that it was in good shell and core standard.
27. The Tribunal accepts that the subject property is in a shell and core state, at present. No evidence was put before the Tribunal in relation to the condition of the building on the valuation date. The Tribunal was told that the subject property was rebuilt in 2011, to shell and core standard. However, there is no evidence to suggest that the rebuild was not carried out to proper standards.
28. The Tribunal finds that being merely in shell and core condition does not make the subject property incapable of beneficial occupation. There is no clear evidence before

the Tribunal to suggest that the subject property would be “*sterile in any and everybody’s hands*”.

29. Consequently, the Tribunal finds that the defects outlined by Mr. O’Brien in relation to the subject property are not such to make the property incapable of beneficial occupation.
30. Accordingly, the Tribunal disallows the appeal in the present proceedings and confirms the decision of the Respondent.
31. In *Petmania v Commissioner of Valuation VA15/5/066* the Tribunal reduced the valuation of respect of Property No. 2203097, a retail warehouse at Unit 2 Eastpoint Retail Park, for the reasons therein set out. The Respondent by virtue of section 38 of the Valuation Act 2001 is obliged to amend the valuation list in a manner consonant with that decision. The Respondent has power under section 40 of the said Act, if it amends a valuation list in respect of a particular property under section 38, to also amend in a manner consonant with that decision of the Tribunal, each other property appearing on the valuation list as he considers similarly circumstanced to the said property. The Tribunal is of the view that consideration ought be given by the Respondent to exercising his power under section 40 in respect of the subject property which is situate in the same retail park as Property No. 2203097 given that uniformity and equity are essential to the administration of the rating system.

And the Tribunal so determines.