

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2015**

Remcoll 3 Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of
Property No. 283540, Retail (Shops) at Oldtown, Dublin, Co Dublin

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17TH DAY OF OCTOBER 2022

BEFORE

Sarah Reid, BL

TRIBUNAL MEMBER

1. THE APPEAL

- 1.1 By Notice of Appeal received on the 12th day of September 2019, the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV)’ of the above Property was fixed in the sum of €16,280.
- 1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because: *“Derelict. The site is not fit for habitation”*.
- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0 on the basis that the property is derelict, and incapable of habitation given its current state.

2. RE-VALUATION HISTORY

- 2.1 On the 15th day of March 2019 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €16,280.

- 2.2 No representations were made by the Appellant and a Final Valuation Certificate issued on the 10th day of May 2019 stating a valuation of €16,280.
- 2.3 The date by reference to which the value of the Property, the subject of this appeal, was determined is 15th day of September 2019.

3. DOCUMENT BASED APPEAL

- 3.1 The Tribunal considered it appropriate that this appeal be determined on the basis of documents without the need for an oral hearing and, on the agreement of the parties, the Chairperson assigned the appeal to one member of the Tribunal for determination.
- 3.2 In accordance with the Tribunal's directions, the parties were required to submit and exchange their respective summaries of evidence to the Tribunal. On the 8th February 2022 the Tribunal issued directions to both parties to file their precis'. On the 4th March 2022 the Appellant filed their precis and a copy was sent to the Respondent in compliance with Section 36 of the Valuation Act. The Respondent was obliged to file their precis by 28th March 2022 but failed to do so. Thereafter, on 29th March 2022, 10th June 2022, and 20th July 2022, the Tribunal wrote to the Respondent requesting they comply with the direction to file their precis but no response was had.
- 3.3 In the circumstances and in order to progress the within Appeal, the Chairperson of the Valuation Tribunal determined on the 20th September 2022 that the within Appeal was appropriate for assignment pursuant to paragraph 3(4)(b) of Schedule 2 of the Valuation Act 2001 to 2015, and determination by way of document only appeal.

4. FACTS

The Tribunal finds the following facts:

- 4.1 The subject property is located off the R122 at the centre Oldtown village in County Dublin, approximately 22.5km north of Dublin city centre and approximately 10km east of Ashbourne. The property is located in a small rural village with an estimated population of 500 and the immediately adjacent area is predominantly residential in nature though the surrounding area is in agricultural use. The property is held freehold by the Appellant, and was purchased by the current owners in July 2018.
- 4.2 The subject property was formerly operated as the local post office with retail / shop element. The subject property was damaged by a fire in 2016 and has been vacant and derelict since that point. Arising from the said fire, the roof tiles and membranes of the property were removed due to safety concerns and significant damage to the roof.
- 4.3 Planning permission has been sought to redevelop the property into two apartments and same is outstanding and/or under consideration by the relevant local authority at the date of this Appeal.
- 4.4 No objection, information or other indication of the Respondent's position in respect of the subject property was available to the Tribunal for the purposes of determining the within Appeal.

5. ISSUES

- 5.1. As no evidence was submitted by the Respondent, the Appeal falls to be considered on the Appellant's evidence alone, and the submission that the subject property is not 'relevant property' on the basis that it is derelict and uninhabitable, as contended by the Appellant's agent. Arising from this claim, the Tribunal must consider Paragraph 2 of Schedule 3 of the Valuation Act, 2001 as amended, and determine if the subject property is occupied and capable of beneficial occupation or exempt from valuation by virtue of its condition.

6. RELEVANT STATUTORY PROVISIONS:

- 6.1 Insofar as the Appellant seeks to have the subject property excluded from the list as incapable of beneficial occupation, all 'relevant property' falls to be valued in accordance with the provisions of section 49 (1) of the Valuation Act, 2001 and the term is defined in Schedule 3 of the Act as:

1. Property (of whatever estate or tenure) which falls within any of the following categories and complies with the condition referred to in paragraph 2 of this Schedule shall be relevant property for the purposes of this Act:

- (a) buildings,*
- (b) lands used or developed for any purpose (irrespective of whether such lands are surfaced) and any constructions affixed thereto which pertain to that use or development,*
- (c) railways and tramways, including running line property and non-running line property,*
- (d) harbours, piers, docks and fixed moorings,*
- (e) mines, quarries, pits and wells,*
- (f) rights of fishery,*
- (g) profits á prendre, other than rights of fishery,*
- (h) tolls,*
- (i) easements and other rights over land,*
- (j) rights to drill for and take away petroleum,*
- (k) canals, navigations and rights of navigation,*
- (l) advertising stations and land and any buildings used as advertising stations,*
- (m) electricity generating stations, including where appropriate—*
 - (i) all buildings and structures,*
 - (ii) all tanks, including fuel oil tanks, water tanks and chemical tanks,*
 - (iii) boilers, furnaces and ancillary fuel handling equipment,*

- (iv) cooling water inlet and outlet facilities, including pump-houses, culverts, pipe works, weirs and outfall works,*
- (v) natural gas installations,*
- (vi) effluent disposal works, including chimneys and treatment plant,*
- (vii) wind generators, turbines and generators, together with ancillary plant and electrical equipment, including transformers,*
- (viii) docks, cooling towers, embankments, canals (head race, tail race), locks, penstocks and surge tanks,*
- (ix) dams, weirs, bridges, jetties, railways, roads and reservoirs,*
- (x) all ancillary on site developments,*
- (xi) all electric lines.*
- (n) the entire networks subsumed in an undertaking including, as the case may be—*
 - (i) signal transmission and reception equipment, all associated masts, lines, cables, posts, pylons, supports, brackets, ducting, tubing and all equipment necessary for normal effective functioning of the networks up to the supply point for each individual consumer,*
 - (ii) all pipeline networks and systems, including pressurising and pressure reducing equipment, together with associated site developments,*
 - (iii) storage and containment facilities, including tanks, silos or other plant or developments used for the storage and for containment of any substance whether solid or fluid (liquid or gaseous),*
 - (iv) gas works, gas pipelines and natural gas terminals,*
 - (v) telecommunications, radio and television relay and rediffusion networks, including lines, cables and ancillary appendages necessary for the working of such networks,*
 - (vi) electricity transformer stations, including—*
 - (I) all buildings and structures,*
 - (II) all site developments,*
 - (III) transformers,*
 - (IV) electrical equipment, including switchgear, circuit breakers and associated developments,*
 - (V) all electric lines,*
 - (vii) electric lines (within the meaning of the Electricity (Supply) Act, 1927, as amended by section 46 of the Electricity (Supply) (Amendment) Act, 1945), including transmission and distribution networks and consumer service mains and networks on, over, or under ground, together with lines and cables with their respective supports (including poles, pylons and brackets), culverts, cuttings, ductings and pole transformers, used in association with those electricity conductors,*
- (o) any building or part of a building or lands or waterways or harbours directly occupied by the State, including lands or buildings occupied by any Department or office of State, the Defence Forces or the Garda Síochána or used as a prison or place of detention.*

6.2 The Act qualifies 'relevant property' in paragraph 2 of Schedule 3 as follows:

2.—*The condition mentioned in paragraph 1 of this Schedule 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. APPELLANT'S CASE

7.1 The Appellant appointed Ms. Siobhan Murphy MRICS MSCSI IRRV to inspect the property and provide her expert opinion in respect of same. Ms. Murphy provided the following table in her precis of evidence setting out the Respondent's calculation of NAV in respect for the property:

Level	Use	Area (SQM)	NAV (€ per SQM)	NAV (€)
0	Retail Zone A	68.50	200.00	13,700.00
0	Retail Zone B	24.82	100.00	2,482.00
0	Store	5.09	20.00	101.80
			Total (€)	16,283.80
			Rateable Valuation (€)	16,280.00

7.2 The Appellant submits that the subject property is incapable of beneficial occupation due to its inherent condition, as evidenced in the photographs before the Tribunal. It was the Appellant's agent's view that the property would need to be gutted, replastered, rewired and reroofed in order to be of beneficial use to an occupier. In addition, and in support of this claim, the Appellant relied on the state of the property as documented in the 2020 planner's report (emphasis added in yellow by the Appellant)

Although the proposal does not include a retail element as referred to in Objective ED53 of the Fingal Development Plan 2017-2023 the Planning Officer notes that the proposed residential use of this building in the village centre is very much preferable to the building remaining in its current unoccupied, disused and derelict state and its reuse in this regard is to be welcomed.

7.3 The Appellant did not offer evidence of comparable properties or similar circumstanced ratable properties on the basis that the subject property was incapable of beneficial occupation and ought therefore to be removed from the list.

8. RESPONDENT'S CASE

- 8.1 For reasons outlined above at paragraph 3.2, the Respondent has failed to provide a precis of evidence or outline their position in respect of the within appeal and, accordingly, there are no grounds of objection for Tribunal to consider in this appeal.

9. SUBMISSIONS

- 9.1 No legal submissions were made to the Tribunal.

10. FINDINGS AND CONCLUSIONS

- 10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Fingal County Council. In this Appeal, the Tribunal must consider if the subject property is 'relevant property' and/or capable of 'beneficial occupation' within the meaning of paragraph 2 of Schedule 3 of the Valuation Act, 2001 as amended.

- 10.2 It is well established law that the threshold for establishing beneficial occupation is a low one. Furthermore, the absence of a pecuniary benefit being derived from a property, is not determinative of the issue. The four conditions required for ratable occupation to exist were summarized in *John Laing & Son Ltd. v Kingswood* [1949] 1 KB 344 (and subsequently adopted by the Irish High Court as well as this Tribunal) as:

1. There must be actual occupation;
2. It must be exclusive for the particular purposes of the possessor;
3. The possession must be of some value or benefit to the possessor; and
4. The possession must not be for two transient a period.

- 10.3 In addition to the foregoing, when considering whether a property is incapable of beneficial occupation, an oft cited concept is whether the property is 'struck with sterility in any and everybody's hands'. This phrase was discussed in *London County Council v Erith Churchwardens* [1983] AC 562 as follows:

"...if land is 'struck with sterility in any and everybody's hands' whether by law or by its inherent condition, so that its occupation is and would be of no value to anyone, I should quite agree that it cannot be rated to the relief of the poor. But I must demur to the view that the question whether profit (by which I understand is meant pecuniary profit) can be derived from occupation by the occupier is a criterion which determines whether the premises are rateable, and at what amount they should be assessed; and I do not think that a building in the hands of a school board is incapable of being beneficially occupied by them, and is not so occupied because they are prohibited from deriving pecuniary profit from its use."

- 10.4 Insofar as beneficial occupational falls to be considered, the decision of Mrs. Justice Hyland in *Fibonacci Property Ica v Commissioner of Valuation* [2020] IEHC 31 is instructive and paragraph 27 thereof confirmed:

“It is common case that in a deciding whether an owner is in beneficial occupation one does not look only at the question of pecuniary benefit or whether a profit may be made but may also look at the wider question as to whether it is in “immediate use and enjoyment of the land” (as characterized in Sinnott v Neale [1984] (IR JUR. REP. 10, even though in that case the defendant was not in occupation of the property) or whether the occupation was of value (O’Malley v The Congested Districts Board 2 [1919] IR 28)”

- 10.5 Further, and as regards the threshold for beneficial occupation, which is described as a low one, the English Court of Appeal decision in *Williams v Scottish & Newcastle Retail Ltd & Ors* [2001] ALL ER (d) 173 held at paragraph 57-8:

“57. The first and most important of these principles is the distinction between the determination of a person's liability to be rated (on the one hand) and the quantification of that liability by determination of the rateable value (on the other hand). Mr. Holgate submitted that the Lands Tribunal fell into serious error by failing to make this distinction. He also relied on what he called the principles of reality and uniformity. These submissions call for serious consideration.

58. A person cannot be liable to pay non-domestic rates unless he is in occupation of a non-domestic hereditament within the meaning of the 1988 Act, and there is a long line of cases (starting, so far as the modern law is concerned with the Mersey Docks case in 1865) on the concept of rateable occupation. It is a concept which imports the notion of beneficial occupation, but not necessarily in the same sense of being profitable to the occupier personally. Moreover, the need for benefit is (as Mr. Holgate urged, referring to the advice of the judges given by Blackburn J in the Mersey docks case (1865) II HLC 443, 461) a low threshold. Once a hereditament has passed this threshold and is shown to be ratable, the valuation process requires a determination of annual value to a hypothetical tenant holding under a hypothetical annual tenancy and the actual occupier ceases to be relevant.”

- 10.6 Notwithstanding the fact that no evidence was provided by the Respondent in this Appeal, the onus was on the Appellant to make their case for exemption under paragraph 2 of Schedule 3 and satisfy the Tribunal in that respect. Based on the evidence put before it, the Tribunal finds that the subject property is incapable of beneficial occupation and appears to have lain uninhabited since a fire in 2016 which required the roof timbers and membranes to be removed. The Tribunal notes that it would be unusual for a property not to be capable of some beneficial occupation or occupation that serves a purpose even if same had no monetary value. However, in the present case, the Appellant’s evidence was that the property suffers from structural danger and would require complete rebuilding in order for it to be used by a hypothetical tenant, or the owner, in the circumstances. On that basis and given the dangerous and uninhabitable nature of the premises, as evidenced in the unchallenged photographs before the Tribunal, the property is incapable of use and therefore not ‘relevant property’ that falls to be valued.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the Appeal and decreases the valuation of the Property as stated in the valuation certificate to €0.