

**Appeal No: VA20/1/0009**

**AN BINSE LUACHÁLA  
VALUATION TRIBUNAL**

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

**Jerome O'Sullivan**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**In relation to the valuation of Property No. 1738331, Workshop, at 28 Pigeon Lane, Kildare Town, County Kildare.**

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 30<sup>TH</sup> DAY OF JANUARY, 2023**

**BEFORE**

**Fergus Keogh MSCSI MRICS**

**Tribunal Member**

**1. THE APPEAL**

1.1 By Notice of Appeal received on the 11<sup>th</sup> day of March, 2020 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ('the NAV') of the above relevant Property was fixed in the sum of €10,030.

1.2 The grounds of appeal as set out in the Notice of Appeal state 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:

- i. "There is no longer a tenant and there is no source of income from it.*
- ii. Ingraph Design has not been there for 6 yrs. Planning permission was sought for two town houses and refused.*

- iii. *These are privately owned sheds, to store firewood and personal property. There is no water or sewage, which makes it an unrentable property.*
- iv. *I am now a retired person, I could not afford to apply for planning or carry out any improvements to sheds."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €5,015

## **2. RE-VALUATION HISTORY**

2.1 On the 12<sup>th</sup> June 2019 a Revision Request Application Reference Number 2407735 was made by Kildare County Council to the Respondent, a copy of which is attached in Appendix 1 (n/a to public)

2.2 The Revision Manager having considered the matter decided not to exercise his statutory powers in relation to the Revision Request Application as he deemed that no Material Change of Circumstances ('MCC') within the meaning of Section 3 of the Valuation Act 2005, as amended by Section 2 of the Valuation (Amendment) Act 2015 had occurred to the Property and confirmed the valuation of €10,030.

## **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 instructed to exchange their respective summaries of evidence and submit them to the Tribunal.

3.3 In this appeal the Appellant, Mr. Jerome O'Sullivan was a lay-appellant and did not have professional representation. The Respondent was represented by Mr. Vasile Goian of the Valuation Office, ('the Parties').

## **4. FACTS**

4.1 The Tribunal finds the following facts;

4.2 The subject Property is located on the western side of Pigeon Lane just off the Kildare town to Monasterevin road (R445) and a short distance from Kildare town

centre. This is primarily a residential area on the outskirts of the town with established detached houses on large individual plots.

- 4.3 The subject Property comprises a double hay-barn type structure which is elevated and set back from the public road. It is accessed via a steep ramp with a set-back area providing off-street car parking. The Property is of basic construction detail with single skin galvanised corrugated sheet metal walls and vaulted roofs. There is a concrete floor and a small segregated office area. There is an electrical supply to the Property. Water and mains waste services are not connected.
- 4.4 Mr. Goian's précis contains a number of photographs taken in November 2021. The external photographs indicate a building of basic construction detail. Internal photographs indicate that the property on that date was being used for storage purposes.
- 4.5 The Tribunal notes that the Parties have agreed that the Property extends to 334.50 m<sup>2</sup>.

## **5. ISSUES**

- 5.1 The appeal raised the issue as to whether a Material Change of Circumstances ('MCC') within the meaning of Section 3 of the Valuation Act 2005, as amended by Section 2 of the Valuation (Amendment) Act 2015 had occurred to the Property which would result in its removal from the valuation list. On determining this issue, the Tribunal is bound by the authorities as to the essential ingredients of rateable occupation which include the requirement of beneficial occupation.

## **6. RELEVANT STATUTORY PROVISIONS:**

- 6.1 All references hereinafter to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015.
- 6.2 Section 3(1) of the Act in material part defines 'Material Change of Circumstances' as meaning a change of circumstances that consists of:
- (a) the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or
  - (b) a change in the value of a relevant property caused by:
    - (i) the making of structural alterations to that relevant property, or
    - (ii) the total or partial destruction of any building or other erection which

forms part of that relevant property, by fire or any other physical cause.

6.3 If a revision manager is satisfied that a Material Change of Circumstances as defined by section 3 of the Act has occurred since a valuation under section 19 of the Act was last carried out in the rating authority area in which the property is situated, the revision manager has power under section 28(4) (b) of the Act, if the property does not appear on the valuation list and is relevant property to do both of the following:

- (i) carry out a valuation of that property, and
- (ii) include the property in the list together with its value as determined on foot of that valuation.

6.4 Where a property falls to be valued for the purpose of section 28(4) of the Act that value is ascertained in accordance with the provisions of section 49 (1) of the Act which provides:

*“(1) If the value of a relevant property (in subsection (2) referred to as the “first- mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.”*

6.5 By virtue of section 3 of the 2001 Act, ‘relevant property’ must be construed in accordance with Schedule 3 which, in material part, provides:

- (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 the use of that development.

- (2) The condition mentioned in paragraph 1 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 prerequisite for the making of a rate in respect of occupied property, or
  - (b) is unoccupied but capable of being subject of rateable occupation by the owner of the property.

## **7. APPELLANT'S CASE**

- 7.1 The Appellant did not file a précis of evidence as directed and in accordance with the Valuation Tribunal Rules 2019. The sole document that is before the Tribunal from the Appellant to be considered in respect of this appeal is the Notice of Appeal dated 11<sup>th</sup> March 2020 stating the grounds of appeal. These grounds of appeal are previously set out in in paragraph 1.2 above and are quoted directly from the Notice of Appeal.
- 7.2 The Appellant stated in the Notice of Appeal that he considered that the value of the Property ought to have been determined at €5,015.00.
- 7.3 No evidence was submitted by the Appellant in support of his grounds of appeal that were set out in the Notice of Appeal.

## **8. RESPONDENT'S CASE**

- 8.1 Mr. Goian submitted a précis of evidence to the Tribunal and in his précis described the location of the Property being on Pigeon Lane approximately 400m west from Kildare town centre and described the Property as comprising of a double hay-barn single skin galvanised sheet store with concrete flooring and with a small office suite. Mr. Goian inspected the property on the 10<sup>th</sup> November 2021 and described the overall condition of the Property as being satisfactory. Mr. Goian included a location map and photographs of the Property in his précis.
- 8.2 Mr. Goian outlined the valuation milestones of the Property confirming that a Revision Request was received by the Respondent on the 12<sup>th</sup> June 2019. The valuation of the Property at the time of the Revision request was €10,030.

8.3 Mr. Goian advised that the Property was inspected by the Revision valuer on the 28<sup>th</sup> August 2019. No representations were made by the Appellant to the Valuation Manager at this time. The Valuation Manager decided that as no Material Change of Circumstances, within the meaning of section 3 of the Valuation Act 2001 as amended by section 2 of the Valuation (Amendment) Act 2015, had taken place, he issued a No Material Change of Circumstances Notice confirming the valuation of €10,030, a copy of which is attached in Appendix 2 (n/a to public)

8.4 In response to this appeal Mr. Goian set out in his précis details of three Tone of the List Comparison properties in support of his opinion of value of €10,030 and which he stated showed evidence of equity and uniformity of similarly circumstanced comparable properties. Details of these three properties are set out in appendix 2 (n/a to public) attached and may be summarised as follows;

Comparison No. 1. - is an industrial building located in Kildare town extending to 726.65 m<sup>2</sup> valued at €30 per m<sup>2</sup> to give an NAV of €21,700 (rounded).

Comparison No. 2. - is an industrial building located in Kildare town extending to 347 m<sup>2</sup> valued at €30 per m<sup>2</sup> to give an NAV of €10,410.

Comparison No. 3. - is an industrial building located in Kildare town extending to 185 m<sup>2</sup> valued at €35 per m<sup>2</sup> to give an NAV €6,470 (rounded).

8.5 In summarising his comments Mr. Goian stated that;

1. *The subject property was not derelict and that it was suitable to beneficial occupation.*
2. *The subject property was located on Pigeon Lane and benefitted from having parking spaces in front of the building.*
3. *There was insufficient evidence provided to suggest that the subject property is in personal use.*
4. *No Material Change of Circumstances has taken place to this property and hence this appeal should not be allowed.*
5. *The onus of proof is on the appellant and that he has not provided any evidence to show a Material Change of Circumstances has taken place.*

## **9. SUBMISSIONS**

9.1 There were no legal submission made by the Parties.

## 10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Appellant appealed against the Revision Manager's decision arising from the Revision Listing Request submitted by the Local Authority that no Material Change of Circumstances had arisen in relation to the subject Property within the meaning of section 3 of the Valuation Act 2001 as amended by section 2 of the Valuation (Amendment) Act 2015.

10.2 An owner of vacant commercial property is not liable for rates if the property is incapable of rateable occupation because such property is not relevant property within the meaning of section 3 and Schedule 3 of the Valuation Act 2001. There is an extensive line of cases on the concept of rateable occupation which incorporates the concept of beneficial occupation. Beneficial occupation does not mean that the property must yield or generate a profit for the owner. In *Fibonacci Property ICAV v Commissioner of Valuation [2020] IEHC 31* the High Court said at paragraph 27:

*“...in 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*)”*

Accordingly, all that is required is that the property must provide some benefit or value to its owner. If the property satisfies this low threshold, then it is relevant property for the purposes of Schedule 3 of the Act and the Respondent has a duty to determine its net annual value to a hypothetical tenant holding under a hypothetical annual tenancy at the valuation date. If the property is incapable of beneficial occupation, it is not liable to a rate.

10.3 The Appellant's grounds of appeal are set out in paragraph 1.2 above and as they appear on the Notice of Appeal, a copy of which is attached in Appendix 2 (n/a to public) The Appellant did not submit a précis of evidence or make any additional argument in support of his grounds of appeal other than as stated in the Notice of Appeal. The Tribunal is of the view that the Notice of Appeal did not contain the necessary particulars to argue that the Revision Manager's decision is incorrect.

10.4 The fact that the Appellant derives no pecuniary benefit from the Property is not of itself sufficient to satisfy the test that the Property is incapable of beneficial occupation. The subjective intention of an owner of property is not relevant. The situation must be considered and assessed objectively by reference to the physical

state of the property at the valuation date. A property may be in poor condition or in a state of disrepair but that of itself would not be sufficient for it to be considered incapable of beneficial occupation to warrant exclusion from the valuation list. No evidence was adduced in respect of the structural condition of the Property and in the absence of such evidence it must be assumed that the building is capable of beneficial occupation.

10.5 The Tribunal is not persuaded that the Appellant derives no value or benefit from the Property. The photographic evidence contained in the Respondent's précis, taken on the 10<sup>th</sup> November 2021, indicates the Property being used beyond '*to store firewood and personal property*' as stated in the Notice of Appeal.

10.6 The Appellant stated in the Notice of Appeal that the value of the Property ought to have been determined in the amount of €5,015. No evidence was submitted by the Appellant to persuade the Tribunal that the Respondent's valuation should be disturbed.

#### **DETERMINATION:**

Accordingly, for the above reasons the Tribunal disallows the appeal and confirms the decision of the Respondent.

And the Tribunal so Determines.

#### **RIGHT OF APPEAL:**

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.



