

Appeal No: DS 21/0/0022

**VALUATION TRIBUNAL
AN BINSE LUACHÁLA**

**DERELICT SITES ACT, 1990
AN tACHT UM LÁITHREÁIN THRÉIGTHE, 1990**

Vivian Hussey

APPELLANT

AND

Mayo County Council

RESPONDENT

In relation to the market valuation of Mountain View, Castlebar, County Mayo

TRIBUNAL

John Stewart - FRICS FSCSI MCI Arb

Deputy Chairperson

Mema Byrne - BL

Member

Annamaria Gallivan - FRICS, FSCSI, RICS Registered Valuer

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 13TH DAY OF SEPTEMBER, 2023**

THE APPEAL

1. On the 29th of July 2021 a copy of Notice of Determination of Market Value issued in accordance with s. 22 of the Derelict Sites Act, 1990 Act ('the Act') was sent to the Appellant indicating a market value of €150,000 in respect of urban land situated at Mountain View Castlebar, Co Mayo hereinafter referred to as 'the Derelict Site'.
2. The date by reference to which the value of the Derelict Site was determined is the 20th of July 2021.
3. By Notice of Appeal received on the 18th day of October 2021 the Appellant appealed against the Respondent's determination of value. The ground(s) of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Derelict Site is incorrect because: *"This valuation is excessive as the site is in poor condition. I have been trying to develop this site for almost 4 years. Planning ref: P18/655. Our planners*

have not granted plans to make this site non derelict. This proves my case as it makes it less valuable. I find their valuation unreasonable."

4. The Appellant didn't provide their opinion of market value of the Derelict Site.

THE HEARING

5. The appeal proceeded by way of a remote hearing held via Zoom platform, on the 12th of October 2022.
6. In accordance with the Valuation Tribunal (Appeals) Rules 2019 the parties' valuers were to have exchanged their respective valuation reports prior to the hearing and submit them to the Tribunal. In this case the Appellant Mr Hussey was directed on the 7th day of July 2022 to submit a precis of evidence/valuation report to the Tribunal by 18th of August 2022. No precis of evidence was submitted within the time allowed, no extension of time was sought for the submission of a precis of evidence and no explanation given to for the non-compliance with the direction of the Tribunal. A reminder was sent to the Appellant on the 19th of August 2022. On 7th Sept 2022 the Valuation Tribunal spoke to the Appellant by phone, and the Appellant stated that they had not received the Tribunal's previous emails but confirmed that all contact details were correct.
7. The Appellant was informed on the 12th of September 2022 that they had not submitted a precis of evidence as directed by the Chairperson of the Tribunal on the 7th of July 2022. They were further informed that if any if for any reason the party was unable to comply with the Tribunal directions, the person may request an extension of time in writing to the Tribunal, setting out the reason(s) for non-compliance and, if appropriate, explain any delay in seeking extension of time. Any such request would be forwarded to the Chairperson for consideration. The Appellant was also informed that it was a serious matter to fail to comply with the direction of the Tribunal as non-compliance may result in the appeal being struck out for want of prosecution. A copy of the Valuation Tribunal Rules was appended to the e-mail.
8. There was no appearance by the Appellant at the hearing scheduled for this 2 pm 12th of October 2022, no adjournment of the hearing was sought in advance of the hearing and no adequate explanation was furnished to the Tribunal for the non-appearance. The Tribunal contacted the Appellant by phone shortly after it was clear that there was no appearance by the Appellant to inquire as to whether he would be appearing and was informed that he would not as there was "a work emergency." No further details were furnished to the Tribunal.
9. Subsequently the Tribunal has reviewed the circumstances of the Appeal and for clarity refers to the following extracted from the Valuation Tribunal (Appeals) Rules 2019 (the 2019 Rules)

10. Conduct of Appeal Hearings
Pursuant to article 89 of the Valuation Tribunal (Appeals) Rules 2019
"... the Tribunal may regulate its own procedure and conduct the appeal in the manner it considers fair and proportionate to the importance of the appeal, the anticipated costs and the resource is of the parties."
11. Article 116 of the 2019 rules provides that a failure to comply with any provision of the 2019 rules or any direction of a Tribunal does not of itself render the appeal or any step taken in the appeal void. In the case of such non-compliance, a Tribunal may take such action as it considers just.
12. Further article 117 provides *"An appeal will be struck out for want of prosecution where there is no adequate justification for delay resulting from non-compliance with the direction of Tribunal which adequately warned the party that failure to comply with the direction would lead to the striking out of the appeal."*
13. Pursuant to article 92 of the 2019 rules *"If A party does not appear at a hearing having been informed in writing of the date, time, and place of the hearing in accordance with rule 83, a Tribunal may dismiss the appeal. Before doing so, a Tribunal shall consider any information available to it following such enquiries as may be practical about the reason for the party's absence."*
14. Article 79 (c) of the 2019 rules in relation to appeal hearings provides *"The Valuation Tribunal must hold a hearing before deciding an appeal except where (c) subject to rule 108, an appeal is struck out in accordance with rule 92 by reason of the non-appearance of the Appellant:"*

RELEVANT STATUTORY PROVISIONS

15. A local authority is required by s. 22 of the Act to determine, after a derelict site has been entered on the derelict sites register maintained under s. 8 of the Act, the market value of unencumbered value of that site in such manner and by such means as they think fit. In that regard, a local authority may authorise a person suitably qualified to inspect the site and report to them on the site's market value.
16. Under s. 2 of the Act 'market value' means the value of the relevant urban land assessed in accordance with s. 22. That assessment is undertaken
"by estimating or causing to be estimated the price which the unencumbered fee simple of such land would fetch if it was sold on the open market on the valuation date in such manner and in such conditions as might reasonably be calculated to obtain for the vendor the best market price for the land."

THE FACTS

1. There was no appearance by the Appellant at the hearing scheduled for this 2 pm 12th of October 2022, no adjournment of the hearing was sought in advance of the hearing

and no adequate explanation was furnished to the Tribunal for the non-appearance. The Tribunal contacted the Appellant by phone shortly after it was clear that there was no appearance by the Appellant to inquire as to whether he would be appearing and was informed that he would not as there was "a work emergency." No further details were furnished to the Tribunal.

FINDINGS AND CONCLUSIONS

In circumstances where no precis of evidence was submitted to the Tribunal within the time allowed and no extension of time was sought for the submission of a precis of evidence and there was no appearance at the hearing, nor any adequate explanation furnished in relation to the Appellants non-appearance and the Appellant had been adequately warned of the possible consequences the Tribunal strikes out the Appellant's appeal.