

Appeal No. VA07/3/006

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

Peter Bayne

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Workshop at Lot No. 1Aa 1B/1, Cregnanagh, Dalgan, Ballinrobe, County Mayo

B E F O R E

Maurice Ahern - Valuer

Deputy Chairperson

Joseph Murray - B.L.

Member

Damian Wallace - QFA, MIPAV, Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 28TH DAY OF NOVEMBER, 2007

By Notice of Appeal received on the 4th day of July, 2007 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €15.00 on the above described relevant property.

The grounds of Appeal are set out in the Notice of Appeal, and in a letter attached thereto, a copy of which is at the Appendix to this Judgment.

This appeal proceeded by way of an oral hearing held in the Oranmore Lodge Hotel, Oranmore, Co. Galway on the 28th day of September, 2007. At the hearing the appellant appeared on his own behalf. Mr. Patrick Murphy, B.Sc. Property Valuation & Management, MIAVI, a District Valuer in the Valuation Office, appeared on behalf of the respondent, the Commissioner of Valuation. Mr. Michael Gavin, Rates Department, Mayo County Council, appeared as a witness for the Commissioner.

Introduction

The subject property is situated in the townland of Cregnanagh near Shrulce, County Mayo. With regard to the subject property an application for planning permission was made in November 1997 to construct an engineering workshop. In view of this the Valuation Office listed the building for rating purposes.

A valuation certificate was issued to Mr. Ronan Bayne on the 28th August, 2006 in relation to the subject property. The RV was assessed at €15.00. At Representations stage Mr. Ronan Bayne, son of Mr. Peter Bayne, appeared as the occupier and no change was made to the valuation at that stage. At First Appeal stage the occupier's name was changed to Mr. Peter Bayne as he is the registered owner of the property. Again no change was made to the valuation at First Appeal stage. Mr. Peter Bayne further appealed to the Tribunal by Notice of Appeal received on 4th July 2007.

Issue

The grounds of appeal at all times was the rateability issue as indicated by the Representations application, the First Appeal application and Notice of Appeal to the Tribunal.

Submissions of Appellant – Mr. Peter Bayne

Mr. Bayne, having taken the oath, said his occupation was that of a carpenter-builder and small farmer. He was billed for rates for a shed which, he said, is used for agricultural purposes. Although there is planning permission for a workshop on the shed it was never used for trading and no business was carried on there. Mr. Bayne added that he is the registered owner of the premises. The shed was built as a workshop but never used as such. If there is no business carried out in it then how could it be liable for rates, he asked. He said he uses the shed for his own purposes and keeps a tractor there. He did not know what kind of

business he was supposed to be carrying out in the shed. He works as carpenter-builder and small farmer.

He said he has two tractors, a square baler, a hay turner, a manure shaker and a silage trailer. In the shed there are welders, compressors, drills, tools and spanners. He has about 14 sheep which he keeps in the shed in winter and about 6 acres of land.

To support his argument that no business is carried on in the shed Mr. Bayne referred to his ESB bill for a 14-month period in 2006-2007. The ESB bill clearly indicated how little work was done in the shed. He said that when VAT and the standing charge were taken away the ESB bill amounted to 22 cent per day. He asked how one could run a business on 22 cent per day. It was impossible. He said it was total lies to say he was carrying on a business. He used the shed purely for his own private purposes. He used an infrared light in the shed for the sheep in winter. No business was carried on there.

Mr. Bayne also said that he received a number of phone calls that were quite intimidating telling him that he was carrying on a business. He further said that when Mr. Patrick Murphy called to the shed looking for Mr. Ronan Bayne he entered the premises. Mr. Bayne asked Mr. Murphy why he had lied to him on the telephone in stating that he was not on the premises. He added that Mr. Murphy only admitted that he was on the premises when told that a witness had seen him.

Mr. Bayne also said that the 2 comparisons given by the respondent could not be compared with his property. They were both big businesses, not like him who was a small carpenter-builder with a small farming interest. He had only primary school education and it was like comparing him to some professional people.

He said that someone (referring to Mr. Gavin) called his wife about 2 weeks ago looking for him and said, in a very intimidating way, that he would be back. Mr. Bayne said he was the owner and occupier and asked why the caller did not deal with him.

Cross examination of the Appellant

Mr. Murphy asked Mr. Peter Bayne if Mr. Ronan Bayne was an agricultural contractor. Mr. Bayne replied that he was and that Mr. Ronan Bayne was his son and he was not answerable

for him. He said that he was answerable only for himself as he was the owner of the property. When asked if his son Mr. Ronan Bayne used the shed, Mr. Bayne replied “no”. When asked if he was a farmer Mr. Bayne replied that he was a small farmer and builder. To further questions Mr. Bayne replied that he did not keep cattle, but had a flock number as he kept about 14 sheep.

The Tribunal put further questions to Mr. Bayne as to why he sought planning permission as an engineering workshop for the shed in the first place. He said that he had a son who worked with a company which used to make boilers for ranges and stoves and he thought that perhaps one day his son would set up his own welding business, but it never materialised and that was the reason planning permission was sought.

For the Commissioner – Mr. Patrick Murphy’s submission

Mr. Murphy, having taken the oath, adopted his précis as his evidence. The subject property is situated at an address at Liss, Shrule in the townland of Cregnanagh on a minor road off the main N84 road. He said this is a purpose-built workshop which was granted planning permission with reference number 97/1946.

History

Mr. Murphy said the property is on the list for the first time. At Representations stage the property was in the name of Mr. Ronan Bayne. However, at First Appeal stage the occupier’s name was changed to Mr. Peter Bayne, as his name was on the First Appeal stage documentation. No change was made to the valuation at either Representations stage or First Appeal stage.

Comparisons

2 comparisons were used to assess the NAV: Comparison No. 1, a workshop in Ballinrobe with a gross external area of 230 sq. metres valued at €27.34 per sq. metre giving an RV of €44.44; Comparison No. 2, a workshop, also in Ballinrobe, with a gross external area of 307 sq. metres valued at €20.50 per sq. metre giving an RV of €37.58.

Mr. Murphy said that at Revision stage he was unable to arrange an inspection of the premises with Ronan Bayne. He made several attempts to inspect the premises but was

unable to do so. Again at appeal stage he phoned and wrote to Peter Bayne who would not allow an inspection of the premises.

He said that Peter Bayne is listed as a building contractor with the Irish Building Industry Directory and his sons Ronan Bayne and Shane Bayne are listed as agricultural contractors on the Revenue Commissioners web page.

He said the subject workshop was measured on a gross external basis and the valuation assessed at 150.52 sq. metres @ €20.50 per sq. metre, giving a total NAV of €3,085.66 and an RV €15.00.

Mr. Murphy said there was no evidence to date that the subject property could be described as “farm buildings” within the meaning of the Valuation Act, 2001. In his view the shed was rateable as a workshop.

Cross examination of Mr. Murphy by Mr. Bayne

Mr. Bayne challenged Mr. Murphy on his 2 comparisons. He asked if he knew what kind of business was carried out by the occupier of his Comparison 1. Mr. Murphy replied that as far as he was aware the occupier was an agricultural contractor. Mr. Bayne then stated that the occupier of that property sells tractors and, as he himself is a builder and small farmer, he simply could not be compared to a big business like that.

He further asked Mr. Murphy about his Comparison 2. Mr. Murphy said that the property was listed as a workshop. Mr. Bayne said his property should not be compared with Comparison 2 which sells machinery and has a very large volume of business. He said he is as different from those two comparison properties as chalk and cheese. He had only national school education and was a simple builder who did a bit of farming and could not be compared with them. Mr. Bayne went on to say that there were 10 agricultural contractors around Shrulene alone who are not rateable and asked why he was singled out.

Mr. Bayne challenged Mr. Murphy regarding his statement that he was not on the premises and his later admission that he was, after a witness had seen him. He asked why he denied that he had been in the shed. Mr. Murphy replied that he was on the premises but did not make a full inspection as he was not allowed to do so. Mr. Bayne was not satisfied with this

reply and said that it was a lie to state he (Mr. Murphy) was not on the premises when Mr. Bayne first asked him.

Mr. Bayne also asked why the occupier's name was changed from Ronan Bayne to Peter Bayne. Mr. Murphy replied that at Representations stage the documents were in the name of Ronan Bayne and at First Appeal stage they were in the name of Peter Bayne.

Mr. Bayne stated he had not received a copy of the respondent's précis of evidence which contained photographs of the subject property. Mr. Murphy said that they were sent out to Mr. Bayne by registered post. Mr. Bayne said he never received them. The Tribunal adjourned for half an hour to afford Mr. Bayne the opportunity to study the photographs.

Witness for the respondent – Mr. Michael Gavin

Mr. Gavin, having taken the oath, said that he is a Staff Officer in the Rates Department of Mayo County Council and one of his jobs is to list property for valuation under the Valuation Act, 2001. The subject property came to the notice of the Rates Department in July 1998 when planning permission was obtained in the name of Peter Bayne in the townland of Cregnanagh, Liss, Shrute to build an engineering workshop and septic tank.

He said that did not know exactly when the property was built and he called to inspect the premises for rating purposes on 14th March, 2006. He spoke to a man who identified himself as Ronan Bayne and who was wearing overalls and appeared to be working in the workshop. There was also another person present who he did not identify. There was a tractor in the workshop. Ronan Bayne identified himself as the owner of the property. Mr. Gavin said he told Ronan Bayne that he intended listing the property for valuation and that a valuer from the Valuation Office in Dublin would contact him soon to inspect the property and that he would also be informed of the appeal procedures if he wished to avail of them. In this respect a letter dated 16th August, 2006 was addressed to Ronan Bayne.

On 28th August, 2007 Mr. Gavin called to collect the rates. The person there at the time said he was not Ronan Bayne and did not identify himself. He said Mr. Gavin should speak to Mr. Peter Bayne who lived across the road. Mr. Gavin went to the house and spoke with Mrs. Bayne and contact was made with Mr. Peter Bayne by mobile phone. Mr. Bayne said to Mr.

Gavin that an appeal process was under way. The photographs of the subject premises in the respondent's précis of evidence were taken by Mr. Gavin on 28th August, 2007.

On cross examination, Mr. Peter Bayne asked Mr. Gavin if a premises would be rateable if it had planning permission but was not occupied or no business was carried on in it. Mr. Gavin replied that the premises would be rateable and if it was not occupied or no business was carried on in it, then the County Council could waive the rates. In other words, it could be listed but not rated or perhaps rated for part of the year depending on the circumstances.

Summary of matters by the Appellant and Respondent

Appellant

Mr. Bayne concluded that no business was carried on in the property nor at any time did he ever receive any money relating to any such business. Even if there was a business how could it operate on 22 cents worth of electricity per day, he asked. It would not pay him to operate as a business. In the winter he would have hay and grain in the shed and some sheep. He listed many of the items in the shed which included a compressor, drive shafts, a car trailer, a suite of furniture, spanners, wrenches and oil. There was, he said, not one bit of evidence that any commercial work takes place in the shed. He keeps his own tractor there. He said the Commissioner was comparing him with big businesses, one of whom had up to 10 lorries. He was a small building contractor who did a bit of farming and could not be compared with them. Mr. Bayne added that there were 10 agricultural contactors in the area who did not pay rates – so why pick on him or his two sons? He was not accountable for them. The shed was used for agricultural purposes only and he did not make any money from it.

Respondent

Mr. Murphy said that the shed was a purpose-built engineering workshop with planning permission. Peter Bayne was listed as a building contractor. ESB bills were not relevant to the issue. There was a lot of machinery in the shed for only 6 acres of land. The quantum of the valuation was not an issue from the beginning and as he saw it the quantum issue was a new ground of appeal. The subject premises was an engineering workshop and there was no evidence that it could be described as a “farm building” within the meaning of the Valuation Act, 2001.

The Law

Who is the “occupier”? Under the Valuation Act, 2001, Section 3, the occupier is “*every person in the immediate use or enjoyment of the property*”. Mr. Peter Bayne is the registered owner of the subject property and, in the absence of any lease agreement or other evidence, he is deemed to be the occupier of the property for rating purposes. There is no doubt that the property in question is in “use”. However, we must examine the nature of that use and establish whether its use is that of a workshop or an agricultural building within the meaning of the Valuation Act, 2001.

Farm buildings are exempt as relevant property not rateable under Schedule 4 of the Valuation Act, 2001. However, for a definition of “*farm buildings*” we look to Section 3 of the Valuation Act where “*farm buildings*” means:

- “*buildings, parts of buildings, or other structures, occupied together with agricultural land and used solely in connection with agricultural activities on that land.*”

It would appear that the test is:

- The occupier must occupy the building “*together*” with agricultural land.
- The building must be used “*solely*” in connection with agricultural activities on the land.

In other words if the building is used for agricultural purposes, say for storage of oats or hay taken from land used by the occupier of the building, then the occupier passes the test. To pass the test there must be a “connection of use” by the occupier of both the building and the land. The building must be used “*solely*” for agricultural purposes “*connected*” with the land and if it is used for agricultural or other purposes **not** “*connected*” with the land in question, then it fails the test.

The Facts

The subject property has much mechanical equipment which appears to be in use. It also has a work-pit. This is evident from the photographs, the statements of the respondent and the respondent’s witness, and from the evidence given by Mr. Peter Bayne himself. At some period or other the shed contained a silage trailer, a tractor, a manure shaker, and a square baler. It has all the hallmarks of a workshop as the photographs indicate that it has a workbench with electric sockets for drills. Evidence was given that it has 2 welders one of which can work on gas and a pillar drill, a compressor, drive shafts, spanners, wrenches,

hammers and an oil drum. These are certainly the materials of a workshop rather than a farm building.

While it may be possible to do so, it is not the ideal place to put sheep at any time of the year or hay for that matter. Moreover a 6-acre farm is relatively small in connection with a workshop with such a large range of machinery. We ask ourselves the question: is the subject property used “*solely*” for agricultural purposes connected with the 6-acre farm? On the balance of probabilities this appears **not** to be the case. Accordingly, the subject property is not a “*farm building*” within Section 3 of the Valuation Act, 2001 and therefore we find the subject property to be rateable under the Valuation Act, 2001. In the foregoing circumstances and after much consideration the Tribunal has no choice but to affirm the rateable valuation of €15.

And the Tribunal so determines.