

Appeal No. VA10/1/008

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

**Ashley Lodge Nursing Home**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2199995, Nursing Home at Lot No. 26B, Tully East, Kildare, Naas 1,  
County Kildare

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairperson**

**Frank Walsh - Valuer**

**Member**

**Joseph Murray - B.L.**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 15TH DAY OF JULY, 2010**

By Notice of Appeal dated the 4th February, 2010 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €315 on the above-described relevant property.

The grounds of Appeal as set out in the Notice of Appeal are:

"The valuation is bad in law and should be struck out. The valuation has not been assessed in accordance with the provisions of Valuation Act 2001. The valuation report makes no reference to the values, as appearing on the valuation list relating to the same rating authority area of properties comparable to the subject and as required under the provisions of the Valuation Act 2001."

1. This appeal came before the Tribunal by way of an oral hearing held in the offices of the Tribunal Ormond House, Ormond Quay Upper, Dublin 7 on the 19<sup>th</sup> day of April, 2010. At the hearing the appellant was represented by Mr. David Hyland, a member of the partnership that owns and operates Ashley Lodge Nursing Home. Ms. Grainne O’Neill, BL, instructed by the Chief State Solicitor’s Office, appeared on behalf on the respondent, the Commissioner of Valuation. Mr. Denis Maher, MRICS, a valuer in the Valuation Office, was in attendance.

### **Background**

2. From the written submissions prepared by Ms. O’Neill, the précis of evidence prepared by Mr. Denis Maher and submitted to the Tribunal in advance of the oral hearing, and from all the documentation obtained from the Valuation Office and from the appellant, the following material facts emerged:

- a) A request for a revision of valuation in respect of the property concerned was received from Kildare County Council by the Valuation Office on 17<sup>th</sup> April 2008.
- b) On 5<sup>th</sup> August the Commissioner appointed Mr. Denis Maher as the Revision Officer pursuant to Section 28(2) Valuation Act, 2001.
- c) On 26<sup>th</sup> March 2009 Mr. Denis Maher inspected the property concerned.
- d) On 1<sup>st</sup> May 2009 Mr. Maher issued a valuation certificate (proposed) to the appellant and other interested parties to the effect that it was proposed to enter the valuation of the property concerned in the valuation list in the sum of €315.
- e) On 5<sup>th</sup> June Mr. Maher issued a valuation certificate to the effect that the valuation of the property concerned be entered in the Valuation List on 12<sup>th</sup> June 2009 in the sum of €315.
- f) The appellant lodged an appeal against the valuation and on 21<sup>st</sup> December 2009 the Commissioner delegated his functions of considering and making a decision on the appeal to Ms. Olivia Bellamy, acting as the Appeal Officer.
- g) On 12<sup>th</sup> January 2010 Ms. Bellamy affirmed the valuation of €315 and on the same day Mr. Jim Gormley, the Appeal Manager, advised that a valuation certificate to this effect be issued to the appellant and the local authority.
- h) The appellant, being dissatisfied with the Commissioner’s decision, lodged an appeal to this Tribunal on 4<sup>th</sup> February on the grounds that “*the valuation is bad in law and should be struck out. The valuation has not been assessed in accordance with provision of the Valuation Act 2001.* “ and other grounds cited at S.6(e) of Notice of Appeal.

### **The Hearing**

3. At the commencement of the oral hearing Ms. O’Neill on behalf of the respondent submitted as a preliminary issue that the Tribunal did not have jurisdiction to remove or strike out the valuation of the property concerned as requested by the appellant.

4. In a comprehensive written submission Ms. O’Neill contended that the jurisdiction of the Tribunal is specified in Section 37 of the Valuation Act, 2001 which provides as follows:

*“(1) The Tribunal shall consider an appeal made to it under section 34 and may, as it thinks appropriate—*

*(a) disallow the appeal and, accordingly, confirm the decision of the Commissioner, or*

*(b) allow the appeal, and, accordingly, do whichever of the following is appropriate -*

*(i) amend the value of, or any other detail in relation to, the property, the subject of the appeal, as stated in the valuation certificate issued under paragraph (b)(i) or (b)(ii) of Section 33 (2),*

*(ii) decide that the property, the subject of the appeal, ought to be included in, or, as the case may be, ought to be excluded from, the relevant valuation list and, in the case of a decision that the property ought to be so included, determine the value of the property,*

*(iii) amend any detail in relation to the property, the subject of the appeal, stated in the notification made under Section 33 (2)(b)(iii).*

*(2) The Tribunal shall make a decision on an appeal made to it under Section 34 within 6 months from the date of its having received the appeal.”*

5. Ms. O’Neill said that the appellant was claiming that the valuation of the property concerned should be removed from the valuation list due to what they contended are procedural difficulties or infirmities in the way the valuation was made. Since the quantum of the valuation was not in dispute, nor was it claimed that the property concerned was not rateable, the only issue before the Tribunal, Ms. O’Neill said, related to procedural issues which the Tribunal didn’t have the jurisdiction to deal with. In support of this contention Ms. O’Neill referred the Tribunal to the findings of the Tribunal in a previous case **VA08/5/017 - Coolmine Leisure Ltd. and others v The Commissioner of Valuation.**

6. Ms. O’Neill in her submission said that the respondent did not dispute the fact that the Revision Officer made his valuation outside the statutory six month period as provided for

under Section 28(5) of the 2001 Act. If the Tribunal was to accept the appellant's argument that the consequence of the Revision Officer's action should be the removal of the valuation from the valuation list, the Tribunal would be determining the valuation to be null and void which, Ms. O'Neill submitted, would be in excess of its jurisdiction. The only circumstance whereby the Tribunal could order a valuation to be removed from the valuation list was where it found the property concerned to be relevant property not rateable, which the appellant did not claim in this instance.

7. In response to a question from the Tribunal, Ms. O'Neill agreed that if her contention was correct the only remedy open to the appellant in the circumstances that had arisen, was for the appellant to institute judicial review proceedings, which she conceded could be costly.

8. Ms. O'Neill further agreed that the position that the appellant now found itself in was not of its making, but arose solely from the actions of the Revision Officer.

### **Valuation Act, 2001**

9. The Valuation Act is the sole statute dealing with the valuation of property for rating purposes. When the Act came into effect on 2<sup>nd</sup> May 2002, all the existing statutes, some of which dated back to the middle of the nineteenth century, were repealed. In this regard it should be noted that rating is a form of taxation raised at local level based upon the occupation of property.

10. *Inter alia* the Act provides for the revaluation of all properties in each local rating authority area on a regular basis and also makes provision for the revision of a valuation entered in the valuation list between revaluations where "a material change of circumstance" as defined in the Act has occurred.

11. Part 6 of the Act (Section 27 - 29) deals with revisions of valuation and Part 7 (Section 30 - 40) deals with appeals arising therefrom, including appeals to this Tribunal. Sections 6 and 7 set out in some detail the various stages in the revision process from the application for a revision (Section 27) to the right of a dissatisfied party to require the Valuation Tribunal to state and sign a case for the opinion of the High Court (Section 39). Under the Act each stage of the revision and appeal process is subject to a statutory time limit and in each relevant section the word "shall" is used; the only exception being that the Commissioner is under no

time constraint in appointing a Revision Officer following a request for a revision from any party. Statutory time limits have always been a feature of rating legislation.

12. Section 37 is particularly relevant in this appeal and more specifically subsection (b)(ii) thereof which states as follows:

*“[The Tribunal may] decide that the property, the subject of the appeal, ought to be included in, or, as the case may be, ought to be excluded from, the relevant valuation list and, in the case of a decision that the property ought to be so included, determine the value of the property.”*

### **Conclusions**

1. The Tribunal has carefully considered the comprehensive written and oral submissions made by Ms. O’Neill and has considered the various authorities referred to therein. It must be said that the Tribunal is grateful to Ms. O’Neill for the depth and range of her submission which was of great assistance to the Tribunal in arriving at its conclusion in regard to this appeal.
2. The only issue to be considered by the Tribunal at this stage is whether or not the Tribunal has the jurisdiction to remove a valuation from the valuation list as requested by the appellant in this appeal.
3. The respondent contends that the jurisdiction of the Valuation Tribunal is specified in section 37 and argues that the only circumstances in which the Tribunal can decide to exclude a valuation from the Valuation List is where it finds the property concerned to be relevant property not rateable under the provision of section 4.
4. Having examined section 37 and in particular subsection (b)(ii) we are not convinced that it is as restricted as Ms. O’Neill contends. After all, if the Tribunal were to come to a decision in an appeal that “a material change of circumstance” had not occurred the inevitable consequence of such a decision would be the removal of the valuation from the valuation list and the reinstatement of the original valuation. Similarly if the Tribunal were to find that the property concerned in an appeal was not “relevant property” in accordance with Schedule 3, the Tribunal would have no alternative in such circumstances but to direct that the valuation be removed from the list. In this regard we find support in the appeal **VA04/2/018 - Trabolgan Holiday Centre** where the Tribunal found that the Commissioner did not have the authority to direct his

Revision Officer as to how to exercise his powers. In the light of this decision the valuation in the valuation list was amended and the original valuation reinstated.

5. Under Section 37 the Tribunal is obliged to consider an appeal made to it under Section 34. Where the grounds of appeal allege that the revision process was in some way flawed inasmuch as it was not carried out in compliance with the statutory provisions then it is only right that the Tribunal investigate the matter in order to establish the facts. If the Tribunal were to refuse to hear such an appeal, as suggested by the respondent in this instance, it would, in our opinion be an abrogation of the Tribunal's statutory function which is to deal with appeals made to it under Section 34.
6. The Tribunal recognises as a fact that there is a distinct difference between the statutory valuation and revision process as set down in the 2001 Act and the procedures introduced by the Commissioner of Valuation for the carrying out of his/her functions under the Act. Whilst the Tribunal has no power to interfere with how the Commissioner carries out his/her functions or exercises his/her powers in accordance with the Act, the Tribunal has, we believe, the right to enquire as to whether or not a valuation or revision has been carried out in accordance with the relevant statutory provisions. In circumstances where the Tribunal finds that a valuation or revision was carried out in a manner not consistent with the relevant provisions of the Act we are of the opinion that the Tribunal has the power to determine that the entry in the Valuation List be amended and, if appropriate, that the original entry be reinstated. This is in fact what happened in the **Trabolgan** case already referred to.
7. In the appeal **VA02/3/002 -Weir and Sons Dublin Limited V The Commissioner of Valuation** a small retail unit in the Four Seasons Hotel, Ballsbridge was valued as a "relevant property". On appeal, the Tribunal determined that the nature of the licence agreement between Weirs and the hotel was such that the hotel was in rateable occupation of the said unit. Accordingly, therefore, the Tribunal directed that the entry in the Valuation List be struck out and that the unit be valued as part of the hotel premises. The determination of the Tribunal was not appealed by the Commissioner.
8. When the Valuation Tribunal was first established under the Valuation Act, 1988, the determination of rating appeals was removed from the courts where the procedures, including the lodging of recognisance's were found to be unduly complex and resulted in many appeals being invalid. Under the 1988 Act and under the 2001

Act, all determinations of the Tribunal are final in all respects subject to an appeal to the High Court on a point of law only, by way of a case stated. It is therefore the Tribunal's view that it can and must consider all appeals made to it under Section 34 and, where the grounds of appeal include matters relating to the statutory processes as distinct from internal Valuation Office procedures, the Tribunal may accept evidence and submissions in relation thereto and make such determinations as it considers appropriate including, if necessary, the amendment of the valuation list to the extent that the revised valuation is removed and the entry in the valuation list prior to revision reinstated. An attempt to limit the powers of the Tribunal to the extent that the only remedy available to an aggrieved ratepayer in certain circumstances (such as those submitted by the respondent in this appeal) is the initiation of judicial review proceedings, would in our opinion be contrary to the intentions of the legislature when first establishing the Valuation Tribunal under the 1988 Act.

9. Having regard to the above, the Tribunal has come to the decision that it has jurisdiction to proceed with this appeal, to consider the grounds of appeal put forward by the appellant in this instance and to come to such a determination as it considers appropriate in the circumstances. In accordance with the 2001 Act such determination would be final, subject, of course, to an appeal to the High Court under Section 39.

And the Tribunal so determines.