

Appeal No. VA11/2/029

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

**Mary McGrath**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2207491, Store, at Lot No. 2c Unit 3/2 (Rear), Kilbarrack Shopping Centre, Coolock, County Borough of Dublin

**B E F O R E**

**Niall O'Hanlon - BL**

**Deputy Chairperson**

**Frank O'Donnell - FRICS, B Agr Sc, MIREF**

**Member**

**Damian Wallace - QFA, Grad Dip**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 7TH DAY OF DECEMBER, 2011**

By Notice of Appeal received on the 13th day of June, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €20 on the above described relevant property.

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

"The property is uninhabitable because there is no access. It should have been excluded because it is uninhabitable."

The appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7, on the 8<sup>th</sup> day of September, 2011. At the hearing the appellant was represented by Mr. Thomas McGrath. Ms. Rosemary Healy-Rae, BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent. Mr. Liam B. Murphy, BSc (Valuation and Management) & Diploma in Finance and Accounting, a valuer in the Valuation Office, was also present. Both parties having taken the oath adopted their respective précis which had previously been received by the Tribunal as their evidence-in-chief. From the evidence so tendered, the following emerged as being the facts relevant and material to the appeal.

### **The Property**

Property No. 2207491, the subject property, is located in Kilbarrack, between Raheny and Donaghmede and approximately 7½ km northeast of Dublin city centre. The subject property is part of Unit 3, a retail unit in Kilbarrack Shopping Centre.

The subject property is a vacant unit at the rear of Unit 3. The entrance to the subject property has been restricted by the blocking up of the rear access door leading to the service corridor. The subject property is separated from the front of Unit 3 by the erection of a stud wall.

It is not in dispute between the parties that the appellant holds a freehold interest in the property.

### **Valuation History**

A revision request was received by the Valuation Office, from Dublin City Council, to subdivide Unit 3 in Kilbarrack Shopping Centre. A rateable valuation of €20 was assessed on the property and a proposed Valuation Certificate was issued to the appellant on 12<sup>th</sup> October, 2010. No representations were received from the appellant and a Valuation Certificate was issued to the appellant on 12<sup>th</sup> November, 2010.

The appellant lodged an appeal to the Commissioner of Valuation on 9<sup>th</sup> December, 2010. After consideration the valuation remained unchanged and a Valuation Certificate with a rateable valuation of €20 was issued on 8<sup>th</sup> June, 2011.

By Notice of Appeal, received by the Tribunal on 13<sup>th</sup> June, 2011, the appellant appealed against the determination of the Commissioner of Valuation.

### **Written Submissions**

Written submissions were received by the Tribunal from both the appellant and the respondent.

### **The Issues Arising on this Appeal**

The appellant appealed on two grounds: firstly, that the valuation was incorrect on the basis that the property was uninhabitable because there was no access and that accordingly the valuation should be nil; and secondly, that the property ought to have been excluded from the relevant valuation list because it was uninhabitable.

In written submissions, provided to the appellant prior to the hearing, the respondent characterised the appellant's case as being an assertion that the subject property was incapable of beneficial occupation, which characterisation the appellant did not dispute. It was common case between the parties that quantum was not in dispute.

### **Appellant's Evidence**

Mr. Thomas McGrath stated that the subject property was completely inaccessible because not only had a stud wall been erected (which had resulted in the subdivision of Unit 3 and the creation of the subject property) but that the door from the subject property to the service corridor (which ran behind the subject property and other units in the centre) had been blocked up.

Mr. McGrath stated that when the shopping centre was refurbished in 2004 the subject property was partially demolished during the construction of other units backing onto the unit and during the building of a second floor overhead. The subject property had never been completed since – it had a shell finish with no electrical, water or sewerage connections.

Mr. McGrath stated that in any event the door space which had been blocked up was only 650mm wide and that the service corridor entrance, even if the concrete blocks were to be removed, would still be too narrow to allow the property to be successfully used as a storage facility.

In cross-examination Mr. McGrath acknowledged that there had been some discussion with other tenants in the shopping centre about the possibility of leasing the subject property but that at the moment there appeared to be no prospect of letting the property. Mr. McGrath pointed out that even if the subject property were to be let to another tenant in the shopping centre it would be necessary to make structural alterations to the property.

### **Respondent's Evidence**

Mr. Liam Murphy, Valuer, who was called on behalf of the respondent, adopted his précis as his evidence-in-chief. Mr. Murphy stated that he had not been able to gain access to the property to inspect it but that he had inspected Unit 4 (which was vacant) in the company of a representative of the appellant. Mr. Murphy stated that it was his belief that the condition of the subject property was similar to Unit 4. The Tribunal notes that the appellant confirmed, by letter received by the Tribunal on 23<sup>rd</sup> August, 2011, that there was no dispute between the parties in relation to the area of the property.

### **The Submissions on behalf of the Appellant**

Mr. McGrath submitted that, as the subject property could not be used, it should not be rated.

### **The Submissions on behalf of the Respondent**

The respondent submitted that the subject property was relevant property within the meaning of Schedule 3 to the Valuation Act, 2001, in that not only did the property clearly come within Paragraph 1 of the Schedule (which was not in dispute between the parties) but also came within paragraph 2(b) of the Schedule in that it was unoccupied but was capable of being the subject of rateable occupation by the owner.

The respondent acknowledged that the phrase "rateable occupation" was not defined by the Valuation Act, 2001 but that case law, including **Telecom Éireann v. Commissioner of Valuation** [1994] 1 IR 66 and **Iarnród Éireann v. Commissioner of Valuation** (unreported), High Court, Barron J., 27<sup>th</sup> of November, 1992, had established that there were three essential ingredients to rateable occupation: firstly, the occupation must be exclusive; secondly, it must be of value or benefit to the occupier; and thirdly, it must not be for too transient a period.

The respondent submitted that the subject property was in the exclusive possession of the appellant as owner of the Shopping Centre and that such possession was not temporary or transient.

In arguing that the subject property was capable of being occupied, and that such occupation would be of value or benefit to the occupier, the respondent referred to **Sinnot v. Neale** [1948] Ir. Jur. Rep. 10, wherein it was held that pecuniary profit was not an essential requirement to beneficial occupation.

The respondent argued that the subject property was clearly capable of beneficial occupation. The rear access door to the said property had been blocked up. It was submitted that the blocks could be removed at any stage so as to allow the rear access to be used as an entrance to the property via the service corridor. Similarly, the partition which had created the subdivision giving rise to the subject property could be removed again.

The fact that the subject property was capable of beneficial occupation was further evidenced by the fact that the said property could be used by either of the adjoining retail units. The respondent pointed out that at the date of the inspection carried out by Mr. Murphy the appellant was, in fact, in discussions with the occupiers of Unit 2 in that regard. This was not a case where the subject property was “struck with sterility in any and everybody’s hands” to use the test adopted in **London County Council v. Erith Churchwardens** [1893] AC 562.

The respondent argued that the current non-usage of the subject property had resulted from a decision of the appellant to block off the access to it from both sides. The respondent submitted, relying on the decision in **Winstanley v. North Manchester Overseers** [1910] AC 7, that if the owner of a property by his own volition deprives himself of a benefit which he might have received, then there is a potential beneficial occupation and he is liable to be rated in respect of it.

## **Findings**

The issue that arises for determination in this appeal is whether the subject property comes within the terms of Paragraph 2(b) of Schedule 3 of the Valuation Act, 2001, that is to say, whether the property, which is unoccupied, is capable of being the subject of rateable occupation by the owner of the property.

In the present proceedings it is not in dispute between the parties that the appellant is the owner of the subject property.

As observed by the respondent the term “rateable occupation” is not defined by the Valuation Act, 2001. However, in **Iarnrod Eireann v. Commissioner of Valuation** (unreported), High Court, Barron J., 27<sup>th</sup> of November, 1992, the Court stated, at page 4 of its judgment:

“There are three ingredients to rateable occupation:-

- (1) It must be exclusive;
- (2) It must be of value or benefit to the occupier;
- (3) It must not be for too transient a period.”

Accordingly, in order to determine whether the subject property is capable of being the subject of rateable occupation by the owner it is necessary to determine whether each of the three ingredients set out by Barron J. are capable of being satisfied by the appellant in the present proceedings.

The Tribunal finds, on the evidence adduced, that the first and third ingredients of the definition of rateable occupation set out by Barron J. are capable of being satisfied. Uncontested evidence was adduced, and the Tribunal finds, that the appellant owns a freehold interest in the subject property, is in exclusive possession of that property and that his possession is not temporary or transient.

The Tribunal further finds that there is nothing by way of the evidence before it to suggest that the subject property is incapable of beneficial occupation. The Tribunal is satisfied that the subject property cannot be said to be struck with sterility in any and everybody’s hands. In this regard the Tribunal notes that it was uncontested that the appellant had engaged in discussions with other tenants in the shopping centre about the possibility of letting the subject property. Accordingly, on the evidence before it, the Tribunal is satisfied that the second ingredient of rateable occupation is capable of being satisfied by the appellant in the present case.

It follows that the Tribunal is satisfied that the subject property comes within the terms of Paragraph 2(b) of Schedule 3 of the Valuation Act, 2001, that is to say, that the property, which is unoccupied, is capable of being the subject of rateable occupation by the owner of the property.

### **Determination**

Accordingly, the Tribunal disallows the appeal in the present proceedings and confirms the decision of the respondent. In consequence thereof the rateable valuation of the subject property remains fixed at €20.

And the Tribunal so determines.