

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

Mary Fitzgerald

APPELLANT

And

Commissioner of Valuation

RESPONDENT

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 207894, Out-Office At Lot No. 2B, Archersleas, Kilkenny Rural, Kilkenny, County Kilkenny.

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 24TH DAY OF NOVEMBER, 2017**

BEFORE:

Dolores Power – MSCSI, MRICS

Deputy Chairperson

Dairine Mac Fadden – Solicitor

Member

Frank O’Grady – MA, FSCSI, FRICS, FIABCI

Member

1. THE NOTICE OF APPEAL

By Notice of Appeal received on the 25th January 2017, the Appellant appealed against the determination of the Respondent in fixing a rateable valuation of €0 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

“Because the property is rateable and because the property exists. It cannot be rented due to a CPO by Kilkenny County Council.”

2. THE HEARING

The Appeal commenced by way of an oral hearing in the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 7th November 2017. Mr Gerald FitzGerald represented the Appellant and Mr Joseph Turley MSCSI/MRICS represented the Valuation Office on behalf of the Respondent.

3. THE PROPERTY AND ITS RE-VALUATION HISTORY

- 3.1.1 The property comprises of three outbuildings and outdoor courtyard which forms part of a larger residential holding. It is identified as blocks A, B and C with block A being a single storey structure of concrete block walls and a corrugated roof; block B being a former two storey stable/coach house, basic in construction comprising of brick and rubble masonry walls supporting a curved corrugated “barn” type roof; block C a single span structure with concrete block walls.
- 3.1.2 The property was first revised in 1984 where a rateable valuation of £25 (€31.74) was determined which was subsequently reduced to £22 (€27.93) at appeal stage. The property was revised again in 1993, where the rateable valuation of £22 (€27.93) remained unchanged.
- 3.1.3 On the 28th April 2016 an application was made by Kilkenny County Council in accordance with section 27(2) of the Valuation Act 2001 (as amended) (“the Act”) for the appointment by the Respondent of a person under section 28(3) of the Act to exercise powers under that section in relation to the property and Mr Turley was appointed by the Respondent to deal with the application.
- 3.1.4 On the 3rd January 2017 a decision pursuant to section 29 of the Act was issued which stated that the property
- “- will be excluded from the relevant Valuation List on the basis that it no longer exists*
 - will not be included in the relevant Valuation List on the basis that it is deemed to be not rateable”.*
- 3.1.5 On the 25th January 2017 the Appellant appealed to the Valuation Tribunal against the said decision of the Respondent.

4. THE RELEVANT LEGISLATIVE PROVISIONS

Section 27(2) of the Act provides that a rating authority may apply in writing to the Respondent for the appointment by the Respondent of a person under section 28(3) to exercise the powers under that section in relation to one or more properties situate in the area of that authority.

Section 28(3) provides that the person so appointed is to be known as the “revision manager”

Section 28 (4) (a) provides that if a revision manager considers that a material change of circumstances has occurred since a valuation under section 19 was last carried out, he/she may

- “(ii) exclude that property from the list on the ground that the property is no longer relevant property, that the property no longer exists or that the property falls within Schedule 4”*

The relevant part of Schedule 4 which is headed “Relevant Property Not Rateable”, for consideration by the Tribunal is paragraph 6 which states:

Any domestic premises (but subject to section 59(4) (which provides that apartments are rateable in certain limited circumstances)).

“Material change of circumstances” is defined in section 3 of the Act as including at (d) “*the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4*”

Section 28(7) provides that where the revision manager exercises the powers under section 28(4) (a) (ii), he/she is required to issue a notice to the occupier and to the rating authority indicating the manner in which those powers have been exercised.

Section 29(1) (b) of the Act states that the revision manager shall issue to the occupier of a property in which he or she proposes to exercise the powers under section 28(4) (a) (ii) a notice indicating the terms of the notice proposed to be issued under section 28(7) in relation to that property. This is the Notice which was issued by the revision manager on the 3rd January 2017 and the subject of the appeal before this Tribunal.

5. THE ISSUE

The issue to be determined by the Tribunal is whether the revision manager was correct in his determination that there has been a material change of circumstances and that the property should be excluded from the valuation list on the basis set out in the decision notified to the Appellant on the 3rd January 2017 i.e. that it no longer exists; that it is deemed to be not rateable.

6. THE EVIDENCE

6.1 In accordance with the Rules of the Tribunal, the parties had exchanged their précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, the witnesses, having taken the oath, adopted their précis as being their evidence-in-chief. This evidence was supplemented by additional evidence given either directly or under cross-examination.

6.2 Evidence of the Appellant:

This was given by Gerald FitzGerald. He said that his mother Mary, whom he represented, was the owner and occupier of the property since 1955, that it was in commercial use for over 40 years and that she relied on the income from the property. He said that the property had been used as commercial stores, then as auction rooms from which auctions were conducted, and most recently as stores. He said that the property was currently in limbo because it was included in the Kilkenny Western Environs Infrastructure Compulsory Order No 2 of 2006 and that the Notice to Treat had been confirmed and signed on the 8th January 2009. He said that as a result of that CPO, the Appellant had not been in a position to rent the property since 2006 or renovate the property. He said that the Appellant just wanted to retain the rights which were there and to continue to pay the rates.

He contended that the Appellant did not have due notice from Mr Turley to inspect the property and referred to the letter of the 4th August 2016 which he said was dated just

a number of days before the inspection which took place on the 8th August 2016. He said that the information outlined by Mr Turley in that letter as being required to assist in arriving at a fair valuation was never sought at the inspection or provided

He also contended that the local authority (Kilkenny County Council) who submitted the revision request and requested that the property be de-listed had a conflict of interest as they were also the authority who were involved in the CPO.

He said that the Appellant accepted that the property was not in commercial use on the day of the inspection but contended that the property should not be de-listed until the CPO was dealt with. He said that the property was and continues to be a commercial property, that the Appellant did not seek to have it de-listed, did not want it de-listed, wished it to continue to be commercial property and that de-listing was an unnecessary action not required.

He also contended that the local authority should have informed the Valuation Office that the property was under a CPO.

Under questioning from the Tribunal, he accepted that terms were agreed and the value established when the Notice to Treat was confirmed; that the Appellant had sought to rent out the property since 2006 but could not do so as she could not give a commitment to a long term lease; that at the time of the CPO in 2006 the property had been rented out in an arms lengths transaction at a rent of €6,000 per annum on an ad hoc basis from year to year; that he thought that the last auction might have been held in the late nineties or in the year 2000 but he could not be sure of this; that the Appellant had not paid any rates since 2006 and had not received any demands for same; that it had been assumed that no demands were being made because the property was not rented; that no application for a vacancy rebate had been made; that the Appellant was aware that the de-listing would have no impact on the CPO but that the Appellant had established that it was a commercial property and in use as such for 40 years.

Under cross- examination by Mr Turley for the Respondent, Mr Fitzgerald confirmed that the property had not been rented since 2006, that it was not rented out on the date of the inspection, that it was adjacent to the family residence, and accepted the photographic evidence submitted by Mr Turley of the property as he found it on the day of the inspection.

6.3 Evidence of the Respondent:

Mr Turley, the valuation surveyor appointed by the Valuation Office to inspect the property, first outlined the location of the property and gave its description, referring to paragraphs 2.1 and 2.2 of his précis. He also directed the Tribunal to pages 6 and 7 of the précis being the photographs he took on the date of his inspection on the 8th August 2016. He said that the grounds of appeal could be resolved to one single net issue namely whether or not the property was relevant property, as per Schedule 3 of the Act, or whether the property was relevant property not rateable. He said that the Respondent accepted that whilst the property was “relevant property” as defined in Schedule 3 of the Act, the nature of its use was such that it demonstrated that it was relevant property not rateable pursuant to paragraph 6 of Schedule 4 of the Act.

He referred to the Valuation Office records of the property in 1984 a copy of which was included in the précis and which he said had noted as follows:

Old building mainly converted to antique furniture sales room and stores situated on the edge of Kilkenny city. Run by a firm of auctioneers who own the adjoining house and lands. Auction held every three weeks, only fair condition.

He referred to the revision in 1993, to the current valuation and to the request received from Kilkenny County Council on the 28th April 2016 for the appointment by the Respondent of a person pursuant to section 28(3) of the Act to exercise the powers under that section in relation to the property and said that he had been appointed as an officer of the Respondent to deal with the application.

He said that on foot of that appointment, he had inspected the property on the 8th August 2016 and was accompanied by a member of the Appellant's family. He said that he noted that the buildings had no signs of being operated or used for any commercial purpose, that the premises were in poor condition, ceilings were exposed and rooms consisted of bare concrete walls and floors. He said that the property exhibited proof of being used as a store for domestic items and everyday domestic belongings. He said that several items of household furniture, such as a chest of drawers, chairs and shelving, and desktop lights were clearly illustrated in the photographic evidence taken on the day of the inspection. He said that other items observed included old timber panelling, children's toys, bicycles, a ride on lawnmower, and timber tree cuttings. Based on his findings, he said that he believed that the property was in domestic use and should be distinguished in the Valuation List as exempt from rates.

He said that he was satisfied that circumstances did exist to warrant the exercise of powers conferred by section 28(4) of the Act, that a material change of circumstances had occurred as in his opinion there had been the happening of an event whereby the property began to be treated as relevant property not rateable by virtue of paragraph 6 of Schedule 4 of the Act 2001.

He referred to the definition of "domestic premises" in the Act and also noted section 3(4) (b) of the Act which provides that a property shall not be regarded as being other than a domestic premises by reason only of the fact that:

"The property is partly comprised of a yard, out office or appurtenance, garden or other land usually enjoyed with the relevant dwelling"

Under cross-examination by the representative for the Appellant, he was asked why the letter dated 4th August 2016 made no reference to the instruction from the local authority to de-list the property and he said that while the request was to de-list, the Valuation Office did not work for the local authority but was independent of them and he had to inspect the property and satisfy himself if the request was correct and accurate. The Appellant said that he was contending that it ought to have been disclosed. It was also put to Mr Turley that he had not sought the information referred to in that letter and in reply Mr Turley said that on the day of the inspection he had first called to the offices of the Appellant's son David, had a long conversation with him and was given permission to go out and inspect the property. The representative for the Appellant said that he had not been aware of this. Mr Turley was asked why he was not aware of the CPO at the time of his inspection and he responded that CPO's were not within his remit. He was asked if he had come across a case like this before and he said that he had not and that it was unusual. It was put to him that there was one question which he had not answered and that was why Kilkenny County Council, who were also involved in the CPO, had requested the de-listing, and he responded

that the Valuation Office was independent of the local authority. Mr Turley stated that if the property was put back into commercial use, the Appellant could request a revision inspection.

6.4 Summing up

6.4.1 Appellant.

Mr Fitzgerald said that the property was an important part of the Appellant's income, that it was subject to a CPO, that while it was not currently in commercial use, it had a commercial use but was in limbo because of the CPO; that the Appellant did not seek to have it de-listed, was happy to pay rates and contended that it should remain on the valuation list and should remain on it until CPO was clarified or finalised. He also said that the decision made did not take into account the CPO and that Kilkenny County Council who requested the revision had a conflict of interest.

6.4.2 Respondent

Mr Turley on behalf of the Respondent said that in carrying out the inspection, he had followed proper procedures, that it was recorded in the evidence that there was no commercial activity in the property on the day of his inspection; that matters related to the CPO were not within the remit of the Valuation Office.

7. **FINDINGS OF FACT AND CONCLUSIONS**

7.1 From the evidence, the Tribunal finds the following facts:

7.1.1 The property is a domestic premises within the meaning of the Act.

Reason: Mr Turley's evidence on behalf of the Respondent's was that on the day of his inspection the property had no signs of being operated or used for any commercial purpose and that he observed several items of household furniture, such as a chest of drawers, chairs and shelving, desktop lights, old timber panelling, children's toys, bicycles, a ride on lawn-mower, and timber tree cuttings in the property which led him to conclude that it was being used as a store for domestic items and everyday domestic belongings. He submitted photographic evidence which showed the interior of the property. The Appellant did not dispute this evidence and under cross examination accepted the photographic evidence. The Appellant also stated that he accepted that the property was not in commercial use on the day of the inspection. The Tribunal is therefore satisfied having regard to the definition of "domestic premises" in section 3(1) of the Act and also having regard to section 3(4) (b) of the Act that the property is a domestic premises.

7.1.2 There has been a material change of circumstances within the meaning of section 3 of the Act. The property is relevant property not rateable and falls within paragraph 6 of Schedule 4 to the Act, "*Any domestic premises (but subject to section 59(4) (which provides that apartments are rateable in certain limited circumstances))*"

Reason: Having regard to the Tribunal's finding of fact that the property is now a domestic premises within the meaning of the Act, it follows that there has been a material change of circumstances within the meaning of section 3 of the Act as there has occurred "*the happening of*" an "*event*" whereby the property which had

previously been commercial property, begins to be treated as property falling within Schedule 4 and in particular within paragraph 6 of Schedule 4.

- 7.1.3 Due notice was given by the Respondent to the Appellant prior to the inspection of the property.

Reason: The Appellant had contended that the Appellant did not have due notice from Mr Turley to inspect the property and referred to the letter of the 4th August 2016 which he said was dated just a number of days before the actual inspection on the 8th August 2016. However, this letter makes it clear that the inspection could take place on dates between the 8th August and the 17th August 2016 and in any event the evidence of Mr Turley was that he had a lengthy discussion with the Appellant's son David Fitzgerald before he called to the property and that he was given permission by David Fitzgerald to do so.

- 7.2 The Tribunal notes that the Appellant alleged a conflict of interest on the part of Kilkenny County Council when it requested the de-listing. The Tribunal has no supervisory functions over local authorities. Notwithstanding that Kilkenny County Council was entitled pursuant to Section 27(2) of the Act to request the Commissioner for Valuation to appoint a revision manager with respect to the property, that Authority had no further role to play or involvement in that revision process. As a matter of law, Section 9 of the Valuation Act provides that the Commissioner for Valuation the Respondent in this case, is appointed by the Minister and subsection (7) provides that the person is independent in the performance of his or her functions.

8 DETERMINATION:

Having regard to the Tribunal's finding of facts that the property is now a domestic premises, that there has been a material change of circumstances and that the property falls within Schedule 4 to the Act, the Tribunal disallows the appeal and confirms that part of the decision of the Revision Manager as set out in the Notice dated 3rd January 2017 issued pursuant to section 29 of the Act, which states that the property "*will not be included in the relevant Valuation List on the basis that it is deemed to be not rateable*".

And the Tribunal so determines.