

Appeal No. VA97/3/001

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Murnane Nolan & Company

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices at Map Reference 50a (Temple Court), Temple Road, Blackrock, Townland:
Newtown Blackrock, DED: Blackrock Temple Hill, Co. Dublin
Notification of Revision under Section 3, 1988 Valuation Act

B E F O R E

Liam McKechnie - Senior Counsel

Chairman

Anita Geraghty - Solicitor

Member

Ann Hargaden - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 9TH DAY OF MARCH, 1998

1. By Notice of Appeal dated the 27th day of June 1997 the appellant company, Messrs. Murnane Nolan & Company, appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £104 on the above described hereditament.
2. The Grounds of Appeal as set out in the said notice are "the R.V. is inequitable and bad in law. The appellant has no record of any notification prior to revision in accordance with the 1988 Act (Section 3(4)(a)) despite being in occupation

for five years prior to the valuation being fixed. In the alternative the notice issued in accordance with the above is invalid or insufficient - appellant seeks to have the R.V. struck out".

2. This case proceeded by way of an oral hearing which took place on the 10th day of November 1997. Mr. Eamon Halpin B.Sc. (Surveying) A.S.C.S. A.R.I.C.S. M.I.A.V.I., appeared on behalf of the Appellant company with Mr. Aidan McDaid, District Valuer appearing on behalf of the Commissioner. The Notice Party above identified was also represented by Mrs. Dorothy Kennedy, Solicitor in the Law Agents Office. In fact, the third party acted as the real Respondent in this appeal because, with quantum agreed, the only live issue before this Tribunal was one of notification under *Section 3(4)(a) of the Valuation Act 1988*. This issue arose against the background and in the circumstances hereinafter referred to.

3. In January 1989, Berwick Investments Limited, who were the then owners of No. 50 Temple Road, Blackrock in the County of Dublin applied to the Respondent County Council for planning permission to carry out "an office development" on this site. On 9th March of that year the required Planning Permission issued. In March/April 1990 Messrs Murnane Nolan & Company entered into an agreement with the Developer/Occupier to lease part of this new development which development was known as "Temple Court". By 1st May of that year the Lessee had entered into occupation of the entire ground floor and part of the first floor. This "demised premises" now constitutes the unit of hereditament the subject matter of this appeal. On so entering a business name plate was erected, outside the premises, on the street frontage. Both the occupation has continued and the name plate has remained in situ to the date hereof.

4. On the 10th March 1995, and for the first time, the Rating Authority issued the form, known as form R2 which requested the Respondent Commissioner to list for revision the hereditaments therein described which hereditaments included No.50 Temple Road, Blackrock. The nature of the revision so required was "value new offices (between Temple House and Carrig House) known as "Temple Court". Following upon and pursuant to this request the valuation list issued on the 10th November 1995 placing a rateable valuation of £110 on this unit. On the 30th November 1995 the ratepayer appealed. There then followed negotiations between the agent on behalf of

the appellant and the appeal valuer on behalf of the Commissioner. By April 1997 the quantum had been agreed at £104. There remained however, and this agreement was without prejudice to, the issue of notification. That issue, as we have previously said, is now before us pursuant to a notice of appeal dated the 27th June 1997.

5. From the evidence so tendered the following additional facts, either agreed or so found, have emerged as being material to this appeal;
- (a) The office development for which planning permission was sought and granted by the Notice Party authorised the sub-division of the entire building into four separate units one of which is occupied by the Appellant Company. The other three units are and for several years have been occupied by separate third parties none of whom are in any way related to or connected with Messrs Murnane Nolan Company.
 - (b) Prior to the request for revision which issued in March 1995, the records of the Respondent Local Authority described, *inter alia*, No.50 Temple Road as "ruins". These records also indicated that one Thomas Murphy was the immediate lessor of the area in question.
 - (c) In purported compliance with its obligations under Section 3(4)(a) of the 1988 Act the Rating Authority had issued a notice, which was, undated, but which from the evidence we are satisfied was posted on the 12th September 1995. That notice, which was not returned, was addressed to "Occupier, Temple Court,
50 Temple Road,
Blackrock,
Co. Dublin".

It then continued: "Re - Rate Account No _____
Property 50 Temple Road, Blackrock

REVISION OF VALUATION

Dear Sir/Madam

The above property has been listed for revision of Valuation.

A Valuer from the Valuation Office,"

It is this document and the service thereof which the third party relies upon as satisfying its obligation under the statutory revision above mentioned. In addition it is pointed out that a similar but by no means an identical notice, was also posted to Mr. Thomas Murphy at "38/50 Temple Road", which notice was returned presumably due to non-delivery.

- (d) The ratepayer in this case, through its agent, has given evidence to the effect that it was never served with and that it never received any notification, in any form, of the intention to list this property for revision. This evidence, which could not be challenged directly, is evidence which we are prepared to accept and accordingly we find as a fact that the occupier of this unit was not notified, prior to the 10th November 1995, of the Council's request for revision as contained in the R2 form.
 - (e) Finally the relevant extract from Thoms Directory, in 1991, was put in evidence where, at page 1095 it refers to the property at numbers 32-54 Temple Hill and though no property number is assigned to the Appellant Company nevertheless that Company is identified by name as being one, amongst other such occupiers of these properties.
6. On behalf of the County Council it was alleged that the issue and service of the undated notice addressed to the occupier of Temple Court was a sufficient compliance with Section 3(4)(a) of the 1988 Act and that accordingly the listing for revision was valid. On behalf of that Company, Mr. Halpin urged upon us the acceptance of his uncontradicted evidence and, if so accepted, made a submission that the listing for revision must be invalid and so declared.
7. *Section 3(4)(a) of the 1988 Act reads as follows "where an application under sub-section (1) of this section in relation to any properties made by any person other than the owner or occupier of that property, the owner and occupier, if known, shall be notified by the rating authority of the application". This section has been considered by this Tribunal on several occasions. See *Blueflite Logistics -v- The Commissioner of Valuation, VA95/1/031* - Judgment given on the 24th February 1997, *John Petitt & Son Limited -v- The Commissioner of Valuation, VA95/5/015* - Judgment given on the 13th October 1997 and *Ambrose Cuddy VA97/2/030, Cuddy McCarthy Associates VA97/2/032 and Brendan M.Forde VA97/2/033* - Judgment issued on 14th October, 1997. From these cases, the principles of which we propose*

to accept and follow, it appears to us, Firstly, that where the issue of non-notification is raised the onus is on the rating authority to satisfy this Tribunal by way of evidence that the section has been complied with; Secondly, that a judgment of non-compliance has the effect of rendering the listing invalid; Thirdly, that the obligation to notify relates to both "the owner and occupier", but this obligation however is qualified by the words "if known": these words in our view clearly mean that if the owner and occupier are known to the rating authority both persons must be notified. In our view in order to render the section meaningful a rating authority must take reasonable steps in order to identify such owner and occupier: whether those steps include the establishment of a system of inspection or an arrangement with the Valuation Office are matters not of our concern. But there must be in our view reasonable inquiries. If therefore as a result of such reasonable efforts the owner and occupier are not known then, notwithstanding actual occupation, there will not be a breach of this section by the rating authority.

8. Applying these principles to the facts of this case we are quite satisfied that the Rating Authority has not complied with its requirements under Section 3(4)(a) of the 1988 Act. In the first instance the Rating Authority must have known, through the application for planning permission, that this intended development was to be sub-divided into four separate units for commercial lettings. Hence the probability if not the certainty of different occupiers. Secondly, it must have been aware, when it issued the R2 form in March 1995, of the probability that more than one legal entity was in "occupation" of these units. Thirdly, that request for revision issued almost six months prior to the 12th September 1995 during which period, it is, as a matter of certainty a fact, that this entire development was inspected by the revising valuer who must have noticed the sub-division of the property and the identity of the individual occupiers. Fourthly, given the fact that there was more than one occupier a notice addressed to "the occupier", is insufficient in that it may go to one but not the other or others in occupation. Fifthly, even if several such notices were issued they may all go to one or more but not necessarily all in occupation as there is nothing within the notice itself to differentiate the unit of hereditament in question and finally, in any event, the notice refers to the property to be revised as "50 Temple Road", and not "Temple Court" or any individual parts thereof. Accordingly, given the finding of fact above made namely that the Appellant Company did not receive notification of the intended listing for revision, we are quite satisfied that in the circumstances as outlined there has been a non-compliance with *Section 3(4)(a) of the 1988 Act* and

that therefore the listing for revision is invalid.

9. In addition however we are also satisfied that the rating authority, at that time, did not have in existence any sufficient system or method by which reasonable steps could be taken in order to identify the owner or occupier of this unit of hereditament. It will be recalled that since the 1st May 1990 this firm of accountants had been in actual occupation of the property in question and more so had, on the external wall on the street frontage their business name plate. That situation therefore existed for more than five years prior to March 1995. That being the situation, if any system was in existence it must in our view have been an inadequate and an inappropriate system which could not reveal the identity of the actual occupiers during this period. Accordingly on this ground alone we would declare the revision invalid.