

Appeal No. VA98/3/020

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

Padre Pio House

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Nursing home and land at Map Reference 1E, Townland: Churchtown, ED: Churchtown,
RD: Mallow, Co. Cork

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

Barry Smyth - FRICS.FSCS

Deputy Chairman

George McDonnell - F.C.A.

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 22ND DAY OF JUNE, 2000

By Notice of Appeal dated the 13th day of July 1998, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £135 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that; "the building is a purpose built home for the elderly. This is their home, and is built out in the country. It is my opinion that if these people were at home in their own homes they would not pay rates".

The relevant valuation history is that the property was first valued in 1997 at £145. Following first appeal the rateable valuation was reduced to £135.

A written submission prepared by Edward Hanafin B.S.c. (Surv) ARICS ASCCS MIAVI, Lisney Chartered Surveyors, 67/69 South Mall, Cork on behalf of the appellant was received by the Tribunal on 1st October 1999. The Tribunal also received a written submission from Mr. Peter Conroy on behalf of the respondent on the 28th day of September 1999.

The oral hearing took place in the Cork County Council Chamber in Cork on the 15th day of December 1999.

Ms. Elizabeth O'Connell B.L. instructed by Mr. Martin Harvey & Co., Solicitors appeared on behalf of the appellant. Ms. Catherine Griffin B.L. instructed by the Chief State Solicitor appeared on behalf of the respondent.

Ms. Griffin said the grounds of appeal before the Tribunal was different to the grounds raised at first appeal. Quantum had been raised at first appeal but the ground of appeal before the Tribunal was the granting of a domestic allowance. An appeal of that nature should be made to the District Court under section 7(1) of the 1978 Local Government Financial Provisions Act.

In reply Ms. O'Connell said the Tribunal had accepted jurisdiction in as much as it was aware of the precise grounds of appeal which were contained in Mr. Hanafin's written submission to the Tribunal. Mr. Hanafin's written submission related to the issue of quantum only. Furthermore Ms. O'Connell submitted that the respondent was not prejudiced as the Commissioner had received Mr. Hanafin's report and he was aware of the grounds of appeal contained in that report.

The Tribunal then retired to consider whether there were valid grounds of appeal before it. The Tribunal decided that there were not valid grounds of appeal before it. The forum for the grounds of appeal was the District Court pursuant to Section 7 of the Local Government Financial Provisions 1978.

Ms. O’Connell then made an application to amend the grounds of appeal in terms of substituting the grounds of appeal, which had been lodged at the first appeal before the Commissioner. The grounds of appeal there were that “the assessment is excessive and inequitable having regard to the provisions of the Valuation Acts and on other grounds also”.

Ms. O’Connell said the grounds for seeking the amendment were that the respondent would not be prejudiced by the amendment as he knew that quantum was the ground of the appeal. This knowledge was derived from the proceedings at first appeal and the report prepared by Mr. Hanafin for the Tribunal proceedings.

Ms. O’Connell also referred to two letters from her solicitor one dated 1st October 1999 and the other dated 4th November 1999. The first letter was to the Chief State Solicitor’s Office and second letter was to Mr. Peter Conroy in the Valuation Office. Both letters stated that only the issue of quantum would be pursued at the appeal before the Tribunal.

Ms. O’Connell submitted that the onus of proof was now on the respondent to show it had suffered prejudice.

In reply Ms. Griffin said the Tribunal was bound by the 1988 Valuation Act and that Act did not allow for the amending of grounds of appeal before the Tribunal. The provision in the 1988 Act at Section 3(5)(b) as to the notice of appeal stated that it should contain “a statement of the specific grounds for the appeal”.

The Tribunal then retired to consider the issue of amendment of the grounds of appeal. The Tribunal decided that the appellant could not substitute the grounds of first appeal before the Commissioner for the grounds lodged before the Tribunal by the appellant. The Tribunal’s decision was based on the absence in the 1988 Valuation Act of any provision to allow it to amend grounds of appeal by substituting totally new grounds.

Ms. Griffin then applied for her costs. This application was based on the grounds that the appeal had been fundamentally flawed and that costs follow the event.

Ms. O'Connell in reply said that the predecessor in title to the appellant had lodged the grounds of appeal to the Tribunal. This person had been a lay person who had made a mistake about the grounds of appeal.

Ms. Karen Kennedy gave sworn testimony. She confirmed that her predecessor in title had lodged the grounds of appeal to the Tribunal. Ms. Kennedy considered that she should not be penalised for the mistake of another.

The Tribunal decided not to make any order as to costs. The decision was based on the fact that the issue the Tribunal had to decide on, namely the grounds of appeal was an unusual one. Ms. O'Connell and Ms. Griffin had cited no decision of the Tribunal on this point.

The Tribunal therefore affirms the decision of the Commissioner of Valuation and determines the rateable valuation of the subject hereditament to be £135.