

Appeal No. VA14/5/170

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

**Rilton Ltd t/a National Autoparts**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

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

Property No. 750296, Office/Warehouse at 185C Emmet Road Kilmainham, County Borough of Dublin.

**JUDGMENT OF THE VALUATION TRIBUNAL  
ISSUED ON THE 28<sup>TH</sup> DAY OF JULY, 2016**

**B E F O R E:**

**Barry Smyth – FRICS, FSCSI, MCI Arb**

**Deputy Chairperson**

**Frank Walsh - QFA, Valuer**

**Member**

**James Browne – BL**

**Member**

By Notice of Appeal received on the 4<sup>th</sup> day of September, 2014 the Appellant appealed against the determination of the Commissioner of Valuation in fixing a net annual valuation of €53,200 on the above described relevant property on the grounds as set out in the Notice of Appeal as follows:

*"The valuation as assessed is excessive, inequitable and bad-in-law."*

The Tribunal, having examined the particulars of the property the subject of this appeal; having confirmed its valuation history; having examined and considered the written evidence and having heard the oral evidence adduced before us by the parties to the appeal,

## **DETERMINES**

That the net annual valuation of the subject property be as set out below:

Offices/Warehouse of 1,478.55 sq. m. at €28 per square metre € 41,339.40  
say €41,300

## **The reasoning being**

### *The Issue of the Mezzanine:*

This property was the subject of revaluation as part of the valuation of every relevant property in the rating authority area of Dublin City pursuant to section 19 of the Valuation Act 2001. In accordance with section 20 of the Act a relevant date for the valuation in accordance with the valuation order was set as the 7<sup>th</sup> day of April 2011. In accordance with section 23 of the Act a property valuation list for the rating authority area was published on the 31<sup>st</sup> of December, 2013 which included the subject property.

A proposed valuation certificate issued for the subject property on the 20<sup>th</sup> of November 2012 with a proposed valuation of €63,500. Representations were received on the 17<sup>th</sup> of December 2012. A Final Valuation Certificate issued on the 16<sup>th</sup> of December 2013 with a decreased valuation of €53,200. An appeal was submitted to the Commissioner of Valuation on the 8<sup>th</sup> of February 2014. The Commissioner disallowed the appeal and upheld the valuation of €53,200.

In evidence it was accepted by the Respondent that the subject property was not inspected for the purposes of the valuation but rather the 'net annual value' (NAV) was based on

information of the property contained in the valuation offices data bases, market rental information and other relevant information gathered as part of the valuation process, which the Respondent asserted was in accordance with section 48 of the Valuation Act 2001.

On inspecting the subject premises for the purposes of this appeal the Respondent discovered a mezzanine situated in the subject property which had not been valued nor included at the valuation date or at first appeal stage. When preparing his precis of evidence for the appeal before this Tribunal the Respondent has sought to include a valuation for this mezzanine.

The Respondent accepts that a valuation on the mezzanine was not included in the valuation arrived at by the Respondent prior to the present appeal, and therefore was not included in the statement of value of the subject property as appearing on the valuation list. He also accepted that it was not included at first appeal stage before the Commissioner of Valuation. It follows that the Mezzanine was not the subject of a decision by the Commissioner.

The Appellant made it clear that he was not appealing the valuation of the mezzanine and that he did not regard it as being properly before this Tribunal.

Section 63 (1) of the Valuation Act, 2001 states *“The statement of the value of property as appearing on a valuation list shall be deemed to be a correct statement of that value until it has been altered in accordance with the provisions of the Act.”* It is often said that the onus is therefore on the Appellant to prove that the valuation as entered is incorrect. However, this Tribunal is satisfied that this section applies equally to the Commissioner.

Section 30 of the Act provides for an appeal to the Commissioner (usually referred to as the 'first appeal stage') from a determination made under section 19 of the Act. A further appeal to the Tribunal from any decision of the Commissioner is provided for by way of section 34 of the Act. Section 34 of the Act confers such a right of appeal to the Tribunal on those persons *“referred to in subsection (1) of section 30...to the Tribunal against the decision of the Commissioner to allow or disallow an appeal under that section in relation to a property...”* (emphasis added).

Section 30 of the Act clearly sets out those persons that can exercise a right of appeal. It includes persons in occupation of the property, occupiers of other relevant properties and persons with an interest in the subject property. This list of persons does not extend to the Commissioner. It does however include the relevant rating authority and it can be presumed that the legislature in drafting the statute conferred a right of appeal on the relevant rating authority as it considered it the most appropriate State body to ensure that the property has been properly valued by the Commissioner. It is clear therefore that where the Commissioner has erred it does not have a right of appeal against its own decision or to appeal its failure to make a decision. It is noted that the relevant rating authority in this matter has not appealed the decision of the Commissioner.

The first appeal stage before the Commissioner enables representations to be made by or on behalf of the ratepayer. These may be verbal or in writing and may be supported with evidence. It is not however a hearing and there is not an opportunity for the parties to be heard as such. Nor could it be said, strictly speaking, that the Commissioner is independent of the valuation office; it is more akin to an internal appeals system. The only opportunity for a ratepayer to appeal to an independent forum is by way of appeal to the Valuation Tribunal. A Tribunal hearing provides an independent forum at which both parties have an opportunity to be heard, adduce evidence and make submissions. Section 36 (2)(b) confers on the Commissioner a right to be heard and adduce evidence at the hearing of the appeal.

It is clear from the wording of section 34 that for a right of of appeal to be exercised pursuant to section 34, the Commissioner must have made a decision against which the appellant seeks to appeal. The Tribunal is obliged pursuant to section 37 to consider any such appeal and on hearing the appeal this Tribunal may disallow the appeal, or allow the appeal and either amend the value or any other detail of the property, or decide that the property, the subject of the appeal ought to be included or excluded or amend any detail in relation to the property, the subject of the appeal. However, the Tribunal is satisfied that the mezzanine is more than a mere detail of the property the subject of the appeal.

An appeal to the Tribunal is often referred to as a 'de novo' appeal or as 'an entire re-hearing'. However, this is true only to a certain point. For example, evidence or grounds of appeal or reliance on a point of law not advanced before the Commissioner will not be allowed to be

advanced before the Tribunal save in very particular circumstances which we need not go into for the purposes of this determination. Therefore the 're-hearing' before the tribunal is, in general, a re-hearing of what went before the Commissioner.

The Commissioner seeks this Tribunal to include in the valuation of the subject property a valuation for the Mezzanine which it omitted to include at the valuation date and first appeal stage. No legal reasons were put forward for this contention and the only reason put forward for its original omission was the failure on the part of the valuation office to inspect the property before the original valuation which in turn was blamed on a lack of resources. The Respondent did put forward an argument that there was an onus on the ratepayer to ensure that his property was valued correctly and to bring to the attention to the Commissioner any errors/or omissions on his part, even if they go against the interests of the ratepayer. No basis, legal or otherwise, was provided to substantiate these assertions and the Tribunal is satisfied that if any such good faith type or 'come clean' onus rested on the ratepayer it would be clearly set out in the relevant legislation.

Of course, this Tribunal is a creature of statute; it is not a Court established by or under the constitution or by or under the Courts (Establishment and Constitution) Act 1961, and therefore must act strictly in accordance with its power and functions as confined by the relevant acts. In *Nangles Nurseries Limited v Commissioner of Valuation* [2008] IEHC 73, unreported, MacMenamin. J., 14<sup>TH</sup> March 2008, set out the following principles as applicable in the interpretation of the Valuation Act 2001:

- “(1) While the Act of 2001 is not to be seen in precisely the same light as a penal or taxation statute, the same principles are applicable;
- (2) The Act is to be strictly interpreted;
- (3) Impositions are to be construed strictly in favour of the rate payer;
- (4) Exemptions or relieving provisions are to be interpreted strictly against the rate payer;
- (5) Ambiguities, if they are to be found in an exemption are to be interpreted against the rate payer;

(6) If however there is a new imposition of liability, looseness or ambiguity is to be interpreted strictly to prevent the imposition of liability from being created unfairly by the use of oblique or slack language;

(7) In the case of ambiguity the court must have resort to the strict and literal interpretation of the Act, to the statutory pattern of the Act, and by reference to other provisions of the statute or other statutes expressed to be considered with it.”

What the Commissioner is contending for is for it to be entitled at final appeal stage to rely on not merely a new ground of appeal nor new evidence nor a new point of law that was not raised at previous stages of valuation, but is seeking to go much further and asserts a right to the inclusion of a significant valuation on part of the subject property which part was not previously valued.

The Tribunal is satisfied that the relevant acts do not confer on the Commissioner of Valuation a power to appeal himself or to introduce at appeal stage before the Tribunal valuations which he omitted at earlier stages. In this regard the Tribunal notes that it was accepted by the Respondent in evidence that the Commissioner would not have an opportunity to contend for the inclusion of the mezzanine had the ratepayer not appealed the decision of the Commissioner. The Commissioner is in effect seeking to piggy back on the appellants appeal in an attempt to do that which he otherwise has no right to do.

There is also an issue of fair procedures to consider. For the Tribunal to allow the introduction of a valuation which was not relied by the Commissioner at earlier stages of the valuation process would be to deny the ratepayer an opportunity that he would otherwise have had to make representations at earlier stages of the appeal concerning that proposed valuation. While it may be argued that the Tribunal hearing, being a *de novo* hearing, the ratepayer is at no loss as he can fully argue his case before it, it is very often through the stages of the appeals process that issues are flushed out and points of relevance refined. It would also of course set the procedures as meticulously set out in the Act at nought and frustrate the intentions of the legislature. Had the Commissioner any such rights this Tribunal is satisfied that they would be clearly set out in legislation. Therefore, the Tribunal is satisfied that to allow the introduction of the valuation of the mezzanine at this stage would prejudice the ratepayer.

The Tribunal is satisfied therefore that as the Commissioner made no decision in respect of the mezzanine it follows that a right of appeal pursuant to Section 34 cannot arise as there is no decision from which to appeal and it is therefore not subject to this appeal. The tribunal is satisfied that the Commissioner has no powers to introduce valuations for the for the first time at appeals stage.

The Tribunal is satisfied therefore that it has no jurisdiction to adjudicate on the valuation of the Mezzanine as put forward by the Respondent as it is not properly before the Tribunal and it so determines.

In reaching its determination the Tribunal does not deem it necessary to address the issue of whether or not the Tribunal can alter a valuation upwards at appeal stage before it, on the urging of the Commissioner or otherwise, on a property that has been the subject of a decision by the Commissioner and which has been the subject of an appeal by an Appellant and it expresses no view either way and leaves such a decision to a more appropriate case.

Quantum:

The Tribunal is satisfied that the tone has not yet emerged for the category of buildings that the subject property falls into.

The Tribunal is of the view that the Respondent's three informers are in a better locale in that they are situated in a more formal industrial estate providing a cluster of these type of buildings which a hypothetical tenant would deem advantageous.

The Tribunal prefers the comparisons put forward by the Appellant and has accordingly given them greater weight than to those of the Respondent.

The Tribunal is particularly concerned that sufficient allowance has not been given for the effect that regular road closures which occur on the access road to the subject property, and which restrict access to the property, would have on the value a hypothetical tenant would place on the subject premises.

The Tribunal therefore determines that the appeal should be allowed and amends the valuation accordingly.